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From Pervert to Predator: Law, Medicine, Media, and the Construction of Contemporary Sexual Deviance

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From Pervert to Predator: Law, Medicine, Media, and the Construction of Contemporary Sexual Deviance

A dissertation submitted in partial satisfaction of the requirements

for the degree Doctor of Philosophy

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by

Rebecca Ann DiBennardo

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ABSTRACT OF THE DISSERTATION

From Pervert to Predator: Law, Medicine, Media, and the Construction of Contemporary Sexual Deviance

by

Rebecca Ann DiBennardo

Doctor of Philosophy in Sociology

University of California, Los Angeles, 2020

Professor Abigail Saguy, Chair

This Dissertation examines how cultural and legal interactions shift the meaning and implications of "predatory" sexual behavior. Specifically, it explores how lawmaking processes, media coverage, and therapeutic jurisprudence have shifted the way that sexually predatory behavior is categorized and defined in California's 1996 Sexually Violent Predator (SVP) Act. Drawing on fieldwork; interviews with experts working in law, medicine, politics, and advocacy; and legal and media content analysis, I develop three substantive chapters exploring different institutions' impact on this law. Chapter Two of the dissertation introduces the SVP Act and examines changes to the law made via Proposition 83, a 2006 voter-initiated statute. Drawing on comparative analysis of legislative history, text, and debates, this chapter demonstrates how the Proposition system allowed for the incorporation of rhetoric that the legislative system did not, justifying different legal penalties for sexual predators at each point in time. Chapter Three uses

content analysis of 323 *Los Angeles Times* articles about sexual predators over the span of 25 years to examine shifting representations of sexual predator victims, crimes, and offenders. Chapter Four examines how interactions between legal and medical actors and systems transform SVP treatment into punishment. Taken together, these chapters illustrate how different aspects of law, medicine, and popular opinion interact to construct sexual predators as increasingly monstrous, and provide a framework to begin to understand the impact and implications of this construction for both sex offenders and victims.

The dissertation of Rebecca Ann DiBennardo is approved.

Jessica Collett

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Juliet Williams

Abigail Saguy, Committee Chair

University of California, Los Angeles

2020

Dear Dad,

I miss you.

Becca

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CHAPTER 1

Introduction

Sociological research, particularly in the area of criminology, largely ignores the contemporary sex offender. Yet, in addition to comprising an integral part of the United States criminal justice system, sex offenders occupy a unique sociological space at the intersection of sexualities, culture, and institutions. Unlike most historically marginalized groups, they are not necessarily innocent—they are denied rights and opportunities because they have committed (or are accused of committing) sex crimes, some quite severe and violent. The visceral societal reaction to these crimes is almost unparalleled. More so than other "criminals," sex offenders instill fear and revulsion; they engender little-to-no sympathy, and they are frequent political scapegoats. In the case of sex offenders, "sex changes the nature of crime and of criminal jurisprudence alike" (Hoppe and Halperin 2018). The way in which sex offenders and offenses are defined and regulated, then, provides the opportunity to examine how legal and cultural interactions shape how we understand sex and sexual violence at various points in time.

Accordingly, this dissertation examines how cultural and legal interactions shift the meaning and implications of "predatory" sexual behavior, using California's 1996 Sexually Violent Predator (SVP) Act as a case study. The SVP Act defined and categorized sexually predatory behavior as a form mental illness, warranting indefinite and involuntary commitment of Sexual Predators to Coalinga State Hospital. Through fieldwork; interviews with experts working in law, medicine, politics, and advocacy; and legal and media content analysis, the project explores how aspects of law, medicine, and popular opinion interact to construct sexual predators as increasingly monstrous, justifying expanding punishment and intense focus on this category of offenders. This study is not meant to be a comprehensive analysis of sex offender

laws or sexual violence, but rather to provide a framework to begin to understand the impact and implications of this construction for both sex offenders and victims.

Background on California's Sexually Violent Predator Act

Sexually Violent Predator (SVP) laws emerged in the 1990's amongst a profusion of new sex offender laws and regulations in the United States, including expanding public registration and notification, extended sentencing, and longer probation sentences for offenders convicted of sexual crimes (Meiners 2009, Pickett, Mancini, and Mears 2013). SVP laws deem certain types of offenders "mentally disordered;" possessing sexual pathologies that make them predisposed to continue offending (for example, pedophilia and sexual sadism). This mental diagnosis justifies their indefinite confinement in mental hospitals after they serve criminal sentences.

California's enacted its Sexually Violent Predator (SVP) Act in 1996, classifying Sexually Violent Predators as "[people] convicted of a sexually violent offense against one or more victims, and/[or] who ha[ve] a diagnosed mental disorder that makes them a danger to the health and safety of others, in that it is likely that [they] will engage in sexually violent predatory behavior" (D'Orazio et al. 2009). Courts assign SVP designations for repeat offenses the law statutorily defines as forceful, violent, or menacing (for example: rape or sodomy). Alternatively, the law automatically considers offenders who commit any sex crimes against victims under the age of 14 eligible for SVP designation.

The term "predatory" in this case refers to offenses that identify and target victims (such as child abduction and molestation), as well as a general incapability for self-control that leads to likely re-offense. The latter, combined with the associated mental disorder, justifies mandatory commitment to mental hospitals (legally termed *civil commitment*) after SVPs have served

criminal penalties. These laws are controversial in part because many legal scholars argue that civil commitment violates both double jeopardy and due process (Brakel & Cavanaugh 2000). In 2006, voter-approved Proposition 83 (commonly referred to as "Jessica's Law"), modified existing SVP statutes to include increased penalties such as lifetime residency restrictions, mandatory GPS monitoring, and enhanced sentencing, including indefinite civil confinement.

In contrast to criminal laws, which are designed to punish various crimes, civil commitment is designed to regulate behavior and prevent future harm, often imposing mandatory commitment for mental illness, developmental disability, or substance addiction. In this case, offenders first serve criminal penalties, and, shortly before release, those convicted of sexual offenses are evaluated to identify potential SVP qualification. Qualifying inmates undergo a series of evaluations by licensed psychiatrists or psychologists, and, if they are determined to meet the SVP criteria, are referred to the district attorney or county counsel of the county where the current controlling offense occurred.

At this point, inmates must go through civil commitment hearing that determines whether there are sufficient facts to designate them an SVP and confine them at Coalinga State Hospital (CHS), a California facility built in 2005 specifically to house and treat SVPs. Individuals remain in custody at Coalinga while awaiting this hearing. During this time, they may engage in treatment if they wish (D'Orazio et al. 2009). Often, SVPs remain in the facility for years awaiting trial, either due to administrative backlog, legal advice, or a variety of other factors (May 2018). The SVP hearing can be a judge or a jury trial, and to be determined an SVP, either must decide beyond a reasonable doubt that the individual meets SVP criteria (jury decisions must be unanimous). Those found to be SVPs are sent back to CHS, where it is suggested that they participate in treatment, and they can petition the court for release on a yearly basis.

Civil commitment laws rely on the provision of treatment for Constitutional legitimacy: legally speaking, SVPs are confined for the sake of public safety while they undergo treatment for their disorder(s) (Janus 2004). Treatment, however, is voluntary, because, in accordance with the SVP Act, the state cannot mandate that offenders participate (Miller 2010). Yet, without successfully completing treatment, patients are rarely, if ever, eligible for release. Even when they do participate in treatment, "success" is rare: by 2006, less than 10% of SVPs nationally had been released (Gookin 2007).

Outline of Chapters

Chapter Two of this dissertation introduces the 1996 Sexual Predator (SVP) Act and examines changes to the law made via Proposition 83, a 2006 voter-initiated statute. Proposition 83 significantly changed the SVP Act by reclassifying all crimes against children under the age of 14 as predatory, reducing qualifying offenses from two to one, and changing civil commitment from two-year terms to indefinite. The 2006 changes to the SVP law were produced by a dramatically different political process than that which produced the 1996 law. Lawmakers proposing the 1996 SVP Act introduced the bill as a draft to the legislature—debating, modifying, and eventually putting it to the California Assembly for a vote. In contrast, Proposition 83 was initially proposed to the legislature as a bill, but rejected due to constitutionality and budget concerns. Rather than rewrite or modify it, lawmakers instead left it intact, removed it from the legislature, and used the initiative process to qualify the bill for direct placement on the 2006 California electoral ballot as a Proposition. The law passed, implementing changes to the SVP Act that fundamentally altered its core components, making the law substantially more punitive and heavily focused on child victims.

Drawing on comparative analysis of legislative history, text, and debates, this chapter examines how the Proposition system allowed for the incorporation of rhetoric that the legislative system did not, justifying different legal penalties for sexual predators at each point in time. Ultimately, I find that legislators in 2006 used the ballot initiative system to circumvent traditional legislative processes and enact changes via popular vote that they had not been able to make a year earlier through the legislative process. I contend that part of the reason why the ballot system could produce these changes is that it created a space for a rhetoric of child victims, which may have helped to convince voters to approve a more punitive law. In contrast, legislators in 1996 worked within existing legislative constraints, relying on a more balanced rhetoric of risk management to gain support for and implement the law. These results demonstrate how the use of popular democratic systems may be used to heighten public emotions in the service of creating more punitive laws.

In addition to legal and political institutions, media constitute an important cultural institution through which meanings of the sexually predatory are filtered, shaped, and reflected. Correspondingly, **Chapter Three** examines how news media represent sexual predator victims, crimes, and offenders, constructing images of the sexually predatory in the process. Drawing on content analysis of 323 *Los Angeles Times* articles published between 1990 and 2015 that use the term "sexual predator" anywhere in their text, I demonstrate that aged and gendered narratives contribute key dynamics to the sexual predator template. Stories about the youngest victims encompass more sexual violence, graphic descriptions of that violence, more male victims, and the oldest offenders. News media use these same child narratives as a rhetorical tool to emphasize the "predatory" nature of offenders and justify retributory violence or harsh legal punishment. In contrast, narratives about adult victims (which often originate from legal and

police discourse) focus mainly on women, often framing them as responsible for their victimization, and effectively removing them from predator discourse. These narratives often build off of police reports, court cases, and statements by politicians, indicating how different institutional interactions impact representations of victims and violence.

Chapter Four further interrogates the role of institutional interactions by examining how the interaction of medicine and law transforms medical treatment of sexual predators into punishment. Existing literature argues that Sexually Violent Predator (SVP) laws, which confine and treat various "mentally disordered" sex offenders for indefinite periods of time, constitute punishment disguised as medical treatment (Douard 2008, Janus 2006). Yet we know little about how SVP treatment and evaluation processes function, or how medical-legal interactions structure treatment environments in punitive ways. Using observation of one three-week-long Sexually Violent Predator trial; in-depth, semi-structured interviews with 12 medical and legal SVP experts; 70 hours of participant observation over 24 months of at a statewide sex offender management coalition and sex offender advocacy group; and analysis of primary documents relating to California's SVP Program, I examine SVP treatment processes at interpersonal and institutional levels.

I find that three factors transform treatment into punishment: 1) institutional inefficiencies, such as staffing shortages and treatment inconsistencies, that make accessing and successfully completing treatment almost impossible, 2) stigma created by the sexual predator label that impacts treatment processes, and 3) the subordination of medical and clinical priorities to legal and punitive priorities. This chapter demonstrates how medical-legal interactions, both institutional and interpersonal, can shape treatment environments in punitive ways. I conclude my analysis by discussing how the therapeutic discourse of SVP laws has begun to expand to

other “undesirable” populations, and the broader implications of using treatment as both mechanism and a justification for the exclusion of “unsolvable” social problems.

**

Overall, this project demonstrates how social, legal, and political institutions have constructed the sexual predator as a *child* predator, which justifies disproportionate attention to sexual predation compared to more pervasive types of sexual violence, such as rape, assault, and sexual harassment of adult women. This framing negatively impacts adult female victims by marginalizing and diminishing their experiences, child victims by exploiting and revictimizing them with extreme representations of sexual violence, and sex offenders by justifying their punishment and stigmatization. More broadly, the hyperbole of this discourse effectively disallows substantive discussion about the larger societal factors that perpetuate and contribute to sexual violence, diverting attention from more pressing and relevant social concerns.

CHAPTER 2

Politics and Punishment: Emotions, Popular Democracy, and California's Sexually Violent Predator Act

Abstract:

In 1996, California enacted the Sexually Violent Predator (SVP) Act, a law that civilly commits the most "predatory" sex offenders to mental hospitals after their criminal sentences. Ten years later, Proposition 83, a voter-initiated statute, significantly changed this law by reclassifying all crimes against children under the age of 14 as predatory, reducing SVP qualifying offenses from two to one, and making civil commitment indefinite. How and why were these changes made at that time and not earlier? Drawing on comparative legal analysis, I find that politicians in 2006 used the ballot initiative system to circumvent legislative processes, enacting changes via popular vote they unable to pass through the legislature. I contend that part of the reason the ballot system could produce these changes was by creating a space for child victim rhetoric that convinced voters to approve a more punitive law. In contrast, legislators worked within existing constraints to implement the law in 1996, relying on a more balanced rhetoric of risk management. These results demonstrate how popular democratic systems may be used to heighten public emotions in order to create more punitive laws. I conclude by discussing the implications of these results for criminal law in the US.

INTRODUCTION

Over the past 25 years, sex offender regulations in the United States multiplied, expanded, and became increasingly punitive. Among the most controversial contemporary sex offender regulations is mandatory civil commitment, which sentences offenders deemed most "predatory" to indefinite confinement in mental hospitals, immediately and directly after serving their criminal penalties. California became one of the earliest adopters of a civil commitment statute in 1996, when the legislature enacted a law called the Sexually Violent Predator (SVP) Act. Ten years later, Proposition 83, a voter-initiated statute, significantly amplified the SVP Act by reclassifying all crimes against children under the age of 14 as sexually violent, reducing SVP qualifying offenses from two to one, and making civil commitment indefinite (Mathews 2008).

The 2006 changes to the SVP law were produced by a dramatically different political process than that which produced the 1996 law. Lawmakers proposing the 1996 SVP Act introduced the bill as a draft to the legislature—debating, modifying, and eventually putting it to the California Assembly for a vote. In contrast, Proposition 83 was initially proposed to the legislature as a bill, but rejected due to constitutionality and budget concerns. Rather than rewrite or modify it, lawmakers instead left it intact, removed it from the legislature, and used the initiative process to qualify the bill for direct placement on the 2006 California electoral ballot as a Proposition. The law passed, implementing changes to the SVP Act that fundamentally altered its core components, making the law substantially more punitive and heavily focused on child victims.

Drawing on comparative analysis of legislative history, text, and debates, this paper examines how the Proposition system allows for the incorporation of rhetoric that the legislative system does not, justifying different legal penalties for sexual predators at each point in time.

Existing work theorizes that a number of factors contribute to shifting and expanding sex offender regulation, including an increased focus on child-victims (Pickett, Mancini, and Mears 2013), stereotypes about "monstrous" sex offenders (Lancaster 2011), and risk management models that classify and sort sex offenders by dangerousness and likelihood to reoffend (Douard 2008). Less discussed is the way that political processes intersect with these factors, in particular the ways in which different political environments may impact the extent to which (and how) narratives of victims, offenders, and risk are incorporated into law. This is particular importance as the use of the voter initiative system to legislate crime grows (Donovan and Karp 2006). While emotional rhetoric always underlies sex offender policy making (Lynch 2002), the initiative system's lack of legislative oversight and direct voter participation may facilitate unique appeals to fear and demonization that traditional policy making processes do not.

Ultimately, I find that legislators in 2006 used the ballot initiative system to circumvent traditional legislative processes and enact changes via popular vote that they had not been able to make a year earlier through the legislative process. I contend that part of the reason why the ballot system could produce these changes is that it created a space for a rhetoric of child victims, which may have helped to convince voters to approve a more punitive law. In contrast, legislators in 1996 worked within existing legislative constraints, relying on a more balanced rhetoric of risk management to gain support for and implement the law. These results demonstrate how the use of popular democratic systems may be used to heighten public emotions in the service of creating more punitive laws. I focus on California, a state that often leads the way in policy for the United States, concluding by discussing the potential implications of this finding for changing sex offender laws and criminal law in the United States more broadly.

Theories of Victims, Offenders, and Risk in the Expansion of Sex Crime Legislation

Sex offender laws make up a core component of changing sentencing law and policy in the United States over the past 30 years (Hobson 2005, Lancaster 2011). The majority of such laws add penalties and regulations to those already broadly considered sex offenders. These include the growth and publication of sex offender registries, additional jail time, and longer probation sentences for offenders convicted of sexual crimes (Meiners 2009). Picket et al. (2013) highlight three theories that underlie the increasing regulation of sex crimes: the victim-oriented concerns model, the sex offender stereotypes model, and the risk management concerns model.

The victim-oriented concerns model grew from what Lancaster (2011) argues were a few high-profile 1980's sex panics regarding satanic ritual abuse (and later proven to be made up). These events shifted popular focus towards child sexual abuse, while instilling permanent anxieties about the pervasive risk of sexual assault to children (Krinsky 2016). According to Lancaster (2011) and other scholars (Bevacqua 2000, Scoular 2010), the resulting frenzy set the scene for the growth of "moral crusades" that prioritized and emphasized the victimization of children by identifying sexual crimes against children as the most egregious and child victims as those in need of the most protection (Fischel 2016). Often, they did so by advocating for "tribute" laws, named after murdered or sexually assaulted children (for example: Megan's Law, the Adam Walsh Act, and Jessica's Law) (Simon 2000). Douard and Schultz (2008) argue that the panic over child sexual abuse shifted the focus of the law away from traditional notions of protection for the accused, towards the notion that the law's function is to protect victims—"The law itself is now being shaped by the innocent imaginary child that must be protected."

Victim-focused narratives go hand in hand with stereotypes of "monstrous" sex offenders. Lancaster (2011) points out that, just as child victims cause panic, so do people who

"look, act, or talk like our vaguely sketched stereotype of what constitutes a sex offender." Such stereotypes include ideas that all sex offender are pedophiles (Lancaster 2011, Levine 2006), that they are untreatable or unable to be reformed (Leon 2011), and that they tend to be strangers to their victims (Greer 2003, Lancaster 2011). Such notions perpetuate harsh punishment rather than rehabilitation, which appears fruitless in this context (Douard 2008).

In addition to victim and offender narratives, the increasing use of risk assessment and management, which identifies and classifies groups of sexual offenders based on their imminent danger to themselves and to others (Haggerty and Ericson 2000, Garland 2001), is often theorized as contributing to expanding sex offender regulation. Despite noted concerns with predicting and evaluating violent behavior (Faust and Ziskin 1988, Bjørkly 1995, Boccaccini et al. 2010, Hughes 1996), this approach is presented as a scientific, valid, and rational way to approach the legislation of sexual violence (Sweet 2018). "Governing through risk" (Baker and Simon 2010) drives punitive trends in carceral policy, often under the guise of efficiency (Vogler 2018).

This guise of efficiency is important because victim-based and sex offender stereotype narratives function differently than do risk assessment narratives. While the former rely upon overt emotions—cultural anger and moral outrage (Herdt 2009, Irvine 2008)—the latter is often presented as neutral or devoid of emotions; an objective way to make sex offender policy (Janus and Prentky 2008). However, Douard (2008) argues that narratives of risk management in fact serve a similar function to cultural narratives that frame sex offenders as monstrous, branding them unable to control their impulses, unworthy of sympathy, and increasingly subject to the removal of legal rights. Risk management thus works in tandem with the logic of the "degraded other," ensuring both that sex offenders are sorted according to risk, and that the appropriate

solution to that risk is to identify and isolate them (Janus and Prentky 2008, Simon 1998, Weitzer 2010).

Civil commitment laws such as California's SVP Act (both the initial and current version) rely almost exclusively on risk assessment, classifying offenders into the Sexually Violent Predator category based on actuarial models that evaluate future dangerousness and propensity to reoffend. In contrast to criminal laws, which are designed to punish various crimes, laws that reside in the civil domain are designed to regulate behavior and prevent future harm. The latter has a lower standard of proof and the penalties imposed are not criminal (while many civil cases result in financial settlements, those relating to mental health often result in mandatory commitment for mental illness, developmental disability, or substance addiction). Most importantly, while criminal law is more constrained by the Constitution and Constitutional issues, civil cases can take into account potential future crimes, be applied retroactively, and can be brought after criminal punishment without counting as double jeopardy (Janus 2006).

Changing Legislative Processes and the Rhetoric of Victims, Offenders, and Risk

While the theoretical models discussed above may partially explain underlying factors in the expansion of sex offender laws, it remains unclear how politicians negotiate understandings of victimization, offender dangerousness, and risk when designing and implementing sex offender policies. A few studies address this topic with conflicting results: Edwards and Hensley (2001) find that the emotional nature of victim advocacy creates pressure for politicians to conform with their demands, or risk being labeled too "sympathetic" towards sex offenders (Leon 2011). In contrast, Sample and Kadleck (2010) find that, while constituent pressure may

play some role in influencing politicians, it is largely policy makers' personal opinions that drive the content of sex offender legislation.

Changing legislative processes may also shape the extent to which victim-based narratives and understandings of danger and risk are possible or resonant. While literature theorizes that emotional narratives can provoke political reactions (Irvine 2008, Herdt 2009), less work examines this relationship from the other direction—how changing political approaches and environments impact the types of narratives used to discuss sexual crime, or the ways in which those narratives may resonate differently in different political settings.

Lynch (2002) is one of few scholars who analyzes the emotional rhetoric present in such discourses, pointing out that legislative discussions of risk are always "seeped in a constellation of emotional expressions of disgust, fear of contagion, and pollution avoidance." She examines how such rhetoric functions within a legislative setting, but does not examine how that setting itself might impact these discussions. Narratives of risk management most frequently appear in more "objective" environments, such as legislatures and courts, while narratives of victimization and moral outrage appear both within legislation and via collective cultural narratives about sexual danger (Irvine 2008). Comparing changes to the SVP Act that occurred via divergent political approaches and settings allows me to examine whether such settings necessitate or rely on different discourses or ways of understanding the sexually predatory, and how understandings of risk may shift in varying political contexts.

Propositions, Voting, and Emotions

This is of particular importance lawmaking processes become more partisan (Dunlap, McCright, and Yarosh 2016) and as the use of ballot initiatives and popular democracy to make

state-level legislation increases (Sabato, Larson, and Ernst 2001). Between 1976 and 1996, Californians voted on 106 statewide ballot initiatives, compared to 29 from 1954 to 1974. In 2018, sixteen initiatives were certified for the California ballot (California Ballot Propositions 2018). California ballot initiatives are brought about by writing proposed laws as petitions, submitting them to the Attorney General, and obtaining the signatures of five percent of the number of people who voted in the most recent election for Governor (currently 623,212 signatures) (Baldassare 2013). If the initiative receives the requisite signatures, it is placed directly on the electoral ballot for a vote.

Initiatives can drastically impact the state budget. Unlike bills that move through the legislature, they do not have to go through the Appropriations Committee for financial approval, and essentially have free reign to cap or expand funding in any way they see fit (including amending tax codes) (Matsusaka 2005). While the Legislative Analyst's Office and Department of Finance provide analysis of the bill's potential impact on state and government finances, this assessment simply provides information—it does not impact the ability of an initiative to move forward in any way (State Assembly 2019). In California, this has resulted in reductions on state education spending, cuts in property taxes, and, in the case of Proposition 83, redirections of large amounts of money towards special programs and policies (Cummins 2018).

As the use of initiatives grows, so too does their scope. One major change in this area is the increasing use of initiatives to legislate crime and criminal issues (Donovan and Karp 2006). Initiatives tend to represent more extreme political ideologies, emotions, and interests (for example, initiatives in California have included the death penalty, gay marriage, and legalizing marijuana) (Gamble 1997, Smith and Tolbert 2001, HoSang 2010). In addition, while often presented as "citizen led," recent initiatives in California tend to be driven and funded by special

interest groups and political parties (Camp 2008, Smith and Tolbert 2001).

Initiatives represent a unique opportunity for legislation to enter into the public arena and become subject to voter opinion. In the case of legislating sex crimes, this may have uniquely intense or punitive results. Sex crimes tend to elicit heightened emotions such as fear, anxiety, and distress (Rogers and Ferguson 2011). These types of emotions impact voter behavior and responsiveness (Halperin, Canetti, and Kimhi 2012, Panagopoulos 2010)—fear, for example, can motivate increased voter participation (Brader 2005). Irvine (2008) argues that sex panics rely on public dramatizations to deploy scripts and images that trigger fear. Ballot initiatives may represent an arena of public dramatization, a setting that allows for fear and demonization of sex offenders to become integrated into law in new and varied ways. Analyzing the political strategies and rhetoric used in Proposition 83 allows me to examine how popular democracy in particular may shape the way in which the sexually predatory is both understood and incorporated into law.

DATA AND METHODOLOGY

Case Study Selection

In the following analysis, I compare the 1996 introduction and construction of the Sexual Violent Predator category in California to the changes made to the law in 2006 via Proposition 83. Because Proposition 83 significantly altered California's SVP Act, this is an ideal comparison. The original 1996 SVP Act, also known as California Welfare and Institutions Code (WIC) 6600, defined an SVP as "a person who has been convicted of a sexually violent offense against two or more victims…and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually

violent criminal behavior" (§ 6600. Definitions, CA WEL & INST § 6600). At the time the law was implemented, individuals received SVP designations for repeat offenses statutorily defined as involving force, violence, duress, menace or fear of injury (for example: rape, sodomy, oral copulation, or lewd and lascivious acts). "Predatory" was defined largely in relation to potential victims: either as a crime committed against a stranger/unknown victim, or by establishing a relationship with a victim for the purpose of victimization.

In 2006, Proposition 83 introduced a number of changes to California criminal law. It added indefinite GPS monitoring for felony sex offenders, expanded the list of crimes that qualified for life sentences in prison to include assault to commit rape during the commission of a first degree burglary, prohibited probation in lieu of prison for some sex offenses (including spousal rape and lewd or lascivious acts), eliminated early release credits for inmates with multiple convictions for specified felony sex offenses such as rape, extended parole for habitual sex offenders, and increased court-imposed fees charged to offenders required to register as sex offenders.

In also made several changes to civil law by modifying the 1996 SVP Act. The most drastic of these changes were lowering the number of SVP qualifying offenses from two to one and changing civil commitment from a two-year term to an indeterminate one. It also redefined all sexual crimes against victims under the age of 14 as sexually violent offenses. The previous version of the law required offending acts that "involved substantial sexual conduct," defining this conduct as penetration, oral copulation, or masturbation—the revised law removed these sections (Section 6600.1a, b). At the same time, Proposition 83 altered the law so that juvenile convictions would count towards SVP eligibility if the offender was age sixteen or older at the time of that conviction (Section 6600.1 g). In conjunction with each other, these changes vastly

expanded the number of juvenile offenders who could qualify for SVP classification. Figure 1 summarizes the major changes the Proposition 83 made to the original SVP Act.

Figure 1: Major changes to the 1996 SVP Act that occurred as the result of Proposition 83

1996 SVP Act		SVP Act after Proposition 83
Two qualifying offenses required for SVP determination	→	***One*** qualifying offense required for SVP determination
Two-year civil commitment	→	***Indefinite*** civil commitment
Offenses against victims under age 14 must involve "***substantial sexual conduct***" in order to be considered sexually violent	→	***All offenses*** against children under age 14 considered sexually violent offenses
Does not mention juvenile offenses	→	***Counts juvenile offenses*** towards SVP determination if the offender was 16 years of age at the time of offense

Data and Methodology

The following discussion is grounded in comparative analysis of legislative text and debates that occurred in California's 1996 SVP Act and in California's Proposition 83. I used the search engine *Westlaw Next* to examine the SVP Act's introduction, review legislative analyses prepared by committee consultants and the staff of the Assembly Office of Research, and to look at the bill's stated purpose, fiscal impact, and support/opposition (the name of the bill was "Assembly Bill 888"). I reviewed the nine California Assembly Reports available on the bill from its introduction on April 18, 1995 – October 10, 1995, when Governor Pete Wilson signed A.B. 888 into law (A.B. 888 was signed into law in 1995, and it went into effect on January 1, 1996), noting major shifts, changes, and debates that occurred. I used the UC Hastings Law School Repository on California Ballot Propositions, which provides the full text of all

individual ballot propositions and related legal and legislative history in the state, to examine Proposition 83. This dataset includes information on who funds, sponsors, and supports the inclusion of Propositions on the ballot, and who opposes them. I used additional information from *Ballotpedia*, an online encyclopedia of American politics and elections that provides information about ballot initiatives, to analyze additional ballot documents and funding sources.

I also occasionally drew from two expert interviews, each 90 minutes long, with key actors involved in the 1996 SVP Act and Proposition 83. I conducted the first in February of 2017 with Judge James E. Rogan[1], a former member of the California House of Representatives who introduced and drafted the original Sexual Predator Act. I conducted the second in May of 2017 with George Runner[2], the representative who introduced, funded, and sponsored Proposition 83. These interviews help elucidate how people participating in these legislative processes understand their motivations and political approaches, shedding light on some of the ways that they orient their actions within and in relation to larger institutional structures (Thornton, Ocasio, and Lounsbury 2012).

FINDINGS

In the following section, I demonstrate how unique features of the ballot Proposition system allow for the incorporation of rhetoric that the legislative system does not, making legislative changes possible in 2006 that were not possible in 1996. Specifically, I find that lawmakers in 1996 worked within existing legislative constraints, relying on civil law and the

[1] Judge James E. Rogan (Superior Court of California), interview by Rebecca DiBennardo, February 1, 2017, transcript available upon request.

[2] George Runner (Board of Equalization, 1st District, California), interview by Rebecca DiBennardo, May 18, 2017, transcript available upon request.

rhetoric of risk management to gain support for and implement the original SVP Act. In contrast, legislators in 2006 used the ballot initiative system to circumvent traditional legislative processes and enact changes via popular vote that they had not been able to make a year earlier through the legislative process. I contend that part of the reason why the ballot system could produce these changes is that it created a space for a rhetoric of child victims, which may have helped to convince voters to approve a more punitive law. These results demonstrate how the use of popular democratic systems may be used to heighten public emotions in the service of creating or justifying more punitive laws. I discuss these findings in more detail below.

Introducing the 1996 SVP Act: New Directions in Civil Law

James R. Rogan introduced A.B. 888, the original SVP bill, to the California legislature on April 18, 1995. During the two-year timeframe surrounding this bill, the California legislature passed several extremely punitive criminal reform laws, all of which went through the legislature. These included a "one strike" law mandating 25-year sentences for specific sexual crimes, including rape, forcible spousal rape, and lewd conduct with a child under the age of 14 (Cal. Penal Code§ 667.61 (1999)), a law requiring nonvoluntary chemical castration for certain child molesters (Cal. Penal Code§ 645 (2000)), and the now-notorious "Three Strikes Law," which enhanced sentencing for those with violent felony convictions and mandated a state prison term of 25 years to life for those with two prior such convictions (Lynch 2002).

The stated purpose of A.B. 888 was to deal with the limitations of determinate sentencing that "compel[ed] the release of about 250…predatory child molesters, forcible rapists, and repeat violent sex offenders…a month" (CA Legis. Assemb. AB 888 Reg. Sess. 1995-1996). The draft went on to point out that current law did not allow for the detention and treatment of sexually

violent offenders who, because of "mental abnormalities or personality disorders," were likely to reoffend. As a solution, the bill proposed civil commitment of these offenders for two years (and no longer), followed by conditional release.

Rogan stated of his intentions regarding the bill:

> One thing I had come to learn during my time in the criminal justice field, is that of all the crimes, or criminals, if you will, the one area out there where the recidivism rate was the highest was for sex offenders. You know, for burglars and carjackers and so forth, at some point, if they don't spend the rest of their lives in jail, they realize that the cost of doing business is no longer a bargain for them, and so they move onto other things. But with sex crimes, I think the recidivist rate back then was around 70 or 80%. So I knew that going into the legislature…we [knew] the recidivist rates on these types of predators is very high…it was…for people that showed a pattern within their criminal history of sexual violence…rather than having life sentences up in state prison or whatever, civilly commit them like we do anybody else who can't control their behavior and become a danger to themselves and to society…" (James E. Rogan, pers. comm.).

In this statement, Rogan uses recidivism statistics (which are, in fact, highly variable and contested, despite frequent use as evidence in both sex offender court cases and legislation, *see* (Hanson and Bussiere 1998)) to justify two-year terms of civil commitment. This law, in contrast to other laws at the time that enhanced criminal sentencing, was designed to regulate behavior and prevent future harm. It would more on creating a new definition of sexually violent behavior and classifying offenders that fell into that category as a future risk to public safety. It would do so by arguing that various types of sexual behavior were pathological and constituted mental

disorders, therefore falling into the domain of civil law and facilitating mandatory commitment as a response.

Enacting a law in the civil domain also offered a number of practical political advantages that creating a new criminal law or enhancing criminal sentencing would not. Most importantly, such a law could be applied retroactively—that is, to offenders already convicted of sex crimes (criminal laws can only be applied moving forward). Second, despite general support for enhanced criminal sentencing during this time, the legislative make-up of the Assembly and State Senate leaned democratic (Ballotpedia 2019), and, according to Rogan, was "more sensitive to the arguments of groups like the ACLU" (James E. Rogan, per. comm.). Working within civil law was thus perceived as politically easier, as it was justified by mental health arguments, rather than overtly punitive intentions. The processes of civil law in this case integrally relate to the rhetoric legislators would go on to employ. In subsequent debates, narratives of risk assessment, reoffence, and dangerousness worked in tandem with mental health diagnoses to create and define the Sexual Predator.

Civil commitment was not, at this point in time, a new way of treating sex offenders in the state of California. In 1939, the state implemented a series of civil laws called the Sexual Psychopath Laws that allowed the commitment of those found guilty of specific sexual crimes (in particular sexual offenses against children and/or acts of sodomy) to mental hospitals (Jenkins 2004). These laws were eventually renamed the Mentally Disordered Sex Offender (MSDO) Laws. They continued until 1982, when, upon the recommendation of the American Bar Association's Committee on Criminal Justice Health Standards and the President's Commission on Mental Health, the state repealed them, citing concerns about a lack of medical diagnostic criteria under which to commit people, as well as the efficacy of existing treatment

programs (Association 1999). In addition, the state determined that the legal implementation of MDSO laws was both a form of preventative detention and extremely discretionary, therefore violating the doctrine of substantive due process (Birgden and Cucolo 2011).

The version of A.B.888 introduced by Rogan was almost identical to MDSO Laws, but contained one major difference—while MDSO laws diverted offenders to mental hospitals in lieu of criminal prosecution, the new law proposed to act *in addition to* criminal sentencing—taking effect at the end of offenders' prison terms. The new law would use *dangerousness*, rather than "amenability to treatment," as the criteria for commitment, thus speaking to potential due process issues (because the bill was about "protecting society from dangerous individuals"). Unlike MDSO Laws, it also gave potential SVPs the right to trials, counsel, cross examination, access to records, and to yearly reviews, appearing more fair and balanced than MDSO Laws (CA Legis. Assemb. AB 888 Reg. Sess. 1995-1996, 4/18/95).

Legislative Processes, Debate, and Rhetoric

Because A.B. 888 went through the state legislative process, it was subject to debates, revisions, and questions via feedback on the initial draft of the bill. These legislative processes of debate focused less on whether sexual offenders could be sorted based on risk or actuarial processes, or whether that is appropriate, and almost exclusively on how to go about sorting offenders already determined to be dangerous for one reason or another. On July 11, for example, the legislature responded to version one of A.B. 888 with a number of follow-up questions, the majority asking for clarification about "treatment" in the law's context. One major question was whether those who might be categorized as SVPs in the future should be notified at the time of their conviction and treated from the beginning of their incarceration (CA Legis.

Assemb. AB 888 Reg. Sess. 1995-1996, 7/11/95). Another asked that, if provisions in the bill were penal, rather than treatment-oriented, should the bill be applied prospectively (that is, to offenders convicted of such crimes after the bill passed, rather than to offenders already serving time for such offenses)?

The written response from the bill sponsors to these questions described the proposed evaluation process for SVP determination, although it did not identify the time at which such offenders would be categorized as SVPs (the language simply states, "once identified…"). It went on to describe the processual timeline of court review, a commitment hearing, and the legal right to representation and trial by jury of the potential SVP, implying that both evaluation and a hearing would occur at the end of a criminal sentence (although never directly stating that). In addition, while inmates would be told that the purpose of evaluations was to determine if they met the criteria to be involuntarily committed, "It would not be required that [they] appreciate or understand that information" (CA Legis. Assemb. AB 888 Reg. Sess. 1995-1996, 7/11/1995).

The response did not speak to the question of treatment during criminal imprisonment, but specified that treatment would occur only via the State Department of Mental Health (i.e. in a State Hospital, i.e. after the criminal sentence was over). It went on to point out that, although the hospital would "afford" treatment, "…amenability to treatment is not required for a finding that any person is a Sexually Violent Predator, nor is it required for treatment of that person: "Treatment does not mean that the treatment be successful or potentially successful, nor does it mean that the person must recognize his or her problem and willingly participate in the treatment program" (AB 888 Reg. Sess. 1995-1996, 7/11/95).

In a bill analysis document (a summary of the bill written in laymen's terms), the California Psychiatric Association noted concerns with A.B. 888 regarding distinctions between

personality disorders and *mental* disorders, highlighting that the bill essentially used the two interchangeably, but that only a mental disorder would justify commitment. In addition, it stated that treatment had to be available that would lead to a reduction of a person's dangerousness to justify commitment: "Psychiatry must always guard against psychiatric commitment being used as a method of social control devoid of treatment" (California Bill Analysis, A.B. 888 Sen., 7/11/1995). Responding to these concerns, the authors modified A.B. 888, stating that, "a small but extremely dangerous group of sexually violent predators that have diagnosable mental disorders…are not safe to be at large and if released represent a danger to the health and safety of others." They went on to clarify that it was in the interest of society to confine and treat such individuals as long as their disorders persisted and they no longer presented a threat, but "not for any punitive purposes" (CA Legis. Assemb. AB 888 Reg. Sess. 1995-1996, 9/12/1995).

During this time, the Department of Mental Health (DOH) was asked to provide a fiscal estimate of the bill, but did not do so before the bill reached the voting stage. Because they did not have an official estimate of cost, Rogan and his staff prepared a statement of projected costs based on 10% of current sex offenders falling into the SVP category (a relatively large percentage), which they estimated would not exceed 100 million dollars. The bill was subsequently placed in the Senate Appropriations Suspense file, where bills that will cost approximately $150,000 or more to taxpayers are usually sent (Myers 2016).

On September 11, 1995, the Appropriations Committee voted unanimously to approve A.B. 888, although the DOH never provided an official cost estimate, and the committee noted that cost estimates were "by no means conclusive" and that the bill was similar to a Washington State law recently ruled to be unconstitutional (Legis. Assemb. AB 888 Reg. Sess. 1995-1996, 9/11/1995). That the goal of the Appropriations Committee is "sound, responsible, affordable

fiscal policy" and the bill went through without a final estimate may speak to the political will and urgency for this law that was already present in 1996 (State Assembly 2019). But, as we will see in the next section, there were even fewer constraints in 2006, as the new law avoided the Appropriations process entirely.

The next day, the legislature voted on the final version of A.B. 888. It received support from the Governor, the Attorney General, Women Prosecutors of California, the Committee On Moral Concerns California, a number of Sheriffs' and Correctional Associations, and several victims' rights organizations, including Justice for Murder Victims and Memory of Victims Everywhere. The California Attorneys for Criminal Justice, Protection and Advocacy, Inc., and the American Civil Liberties Union (ACLU) opposed the bill.

The statement in favor of A.B. 888 was brief, pointing out that California needed a civil commitment procedure to give the state legal authority to "…detain and treat sexually violent offenders who, because of a mental abnormality or personality disorder, [were] likely to re-offend once released from prison," and that "…Likewise, there [was] no current way to prevent their release into society" (CA Legis. Assemb. AB 888 Reg. Sess. 1995-1996, 9/12/1995). The statement in opposition to the bill, made by the ACLU, stated:

> This wide sweeping legislation permits the state to indefinitely confine in mental facilities individuals who have committed sexually motivated crimes based on perceived fears that these persons will commit future crimes. A.B. 888 is essentially a preventive detention scheme based on allegations of future dangerousness, and as such violates substantive due process of law…(CA Legis. Assemb. AB 888 Reg. Sess. 1995-1996, 9/12/1995).

A total of ten representatives voted against the bill as it passed in the Assembly (67 voted in

favor), all of whom declined to speak against it. Rogan pointed out issues with speaking out against sex offender laws in the Assembly, stating, "nobody wants to get hit back home with, 'You voted against increasing the penalty on child molesters'…that's one of the more unfortunate aspects of the intersection between policy and politics (James E. Rogan, per. comm.). This indicates that legislators were likely aware of the pressure of popular sentiment, and demonstrates one way in which this sentiment may have entered into decision-making regarding the 1996 SVP Act.

Governor Pete Wilson opted to sign A.B. 888 into law on October 10 in front of a public audience that consisted of 800 local school children dressed in matching red tee-shirts (Figure 2). Judge James E. Rogan (pictured to the left of Governor Pete Wilson, who is signing the bill), said of the ceremony, "Usually, I'm not moved by the passage of bills. But as I looked out into that audience of children, I thought to myself, 'A few of these children will not be victims because of this bill,' and it brought a tear to my eye" (James E. Rogan, per. comm.). Despite this statement, child victims came up neither during substantive bill debates nor in the original bill's text—it was when the bill left the legislature and became public that the discussion shifted toward child victims.

Figure 2: James E. Rogan and Governor Pete Wilson on October 10, 1995, signing A.B. 888, the Sexually Violent Predator Statute

Overall, legislative structures appear to impact the type of rhetoric utilized in the initial SVP Act by pressuring politicians to disguise, minimize, or medically justify more emotional ideas about sexual predators and sex offenders generally. Yet the mechanisms of the legislative process that are supposed to constrain laws—bill drafts, discussion, funding and budget evaluations—appear to function more as formalities, demonstrating strong political will to pass the law at this point in time. My next section demonstrates that by 2005, the political context shifted slightly and these mechanisms mattered more. With decreased political will to pass modifications to the 1996 SVP Act and other sex offender laws through the legislature, proponents of changing the law turn to the ballot process to overcome these constraints.

Introducing Proposition 83: Circumventing the Legislature

In contrast to the legislative debates surrounding A.B. 888, Proposition 83 was an initiated state statute, which received 373,816 signatures to make it directly to the California ballot without input from the legislature in November of 2006. The initiative was a reaction to the "failure" of the legislature to pass a similar bill, the Sexual Predator Punishment and Control Act, in 2005 (Peckenpaugh 2006).

George Runner and his wife, Sharon (a State Assemblywoman), introduced the 2005 bill, and threatened the legislature that they would initiate a petition drive if the Sexual Predator Punishment and Control Act did not pass. This was a strategy that George Runner planned from the start, due to what he perceived as the legislature's general unwillingness "move forward" on a number of bills regarding crime, a backlash from the rash of criminal sentencing enhancements that occurred in the 1990's and because of a firm Democratic majority in the Assembly (Ballotpedia 2019). He stated:

> The legislature was just not wanting to add additional felonies, [which was] very frustrating to people who were concerned about, you know, potential issues with kids… As a result of that, the effort was then to go directly to the people with regards to the issues—with regards to protecting children from predators…[So we decided to] introduce the whole bill, let the legislature take a look at it, and move forward with the initiative if the legislature did not (George Runner, per. comm.).

Arnold Schwarzenegger, the Governor at the time, supported the Runners' bill, and took a number of steps to ensure that more moderate sex offender legislation did not replace or supplement it. This included vetoing one bill in October of 2005 that proposed creating a Sex Offender Management Board to coordinate policy and another that implemented some residency

restrictions, arguing that neither bill was as broad in scope as the Sexual Predator Punishment and Control Act (Peckenpaugh 2006).

Despite this support, when the Sexual Predator Punishment and Control Act went up for a vote on January 10, 2006, it failed to pass the Public Safety Committees of either the Assembly or the Senate. Amongst other objections, Democrats expressed concerns about its potential costs, the severe residency restrictions the bill proposed, and invasive nature of widespread electric monitoring it would implement. Parts of the bill that changed the SVP Act by eliminating time limitations on civil commitment bought up Constitutional concerns, as did the new residency restrictions it introduced. Democrats in the Assembly and Senate countered with two different pieces of sex offender legislation to address these concerns, AB 50 and SB 1128. These bills included some aspects of the Sexual Predator Punishment and Control Act, but left out some of its more contested elements, such as residency restrictions and GPS monitoring (Peckenpaugh 2006). Yet, rather than modify their bill or respond to these alternatives, the Runners went forth with moving the Sexual Predator Punishment and Control Act to the initiative process.

By the time the Act failed, the Runners had already set up the "Campaign for Child Safety, Jessica's Law 2006," ("Yes on 83") the organization through which the voter-enacted proposition ultimately received over 75% of its donations and funding (Secretary of State 2019b). They paid Bader and Associates, a petition management company that collects signatures to qualify ballot initiatives, $700,000 to collect the signatures for Proposition 83, which the Act came to be called. Bader and Associates has collected signatures for a number of Initiatives throughout the years, including Proposition 8, which banned same-sex marriage in California in 2008, Proposition 4, which attempted to implement abortion waiting periods and

parental notification periods in 2008, and the 2003 Referendum on California Senate Bill 60, the vote to recall Gray Davis.

"Yes on 83" and "Southern Californians for Jessica's Law," the second organization formed to fund the proposition, collected a total of $2,196,152 to fund the campaign in favor of the Proposition. These donations came from a variety of groups and individuals, including: Arnold Schwarzenegger's California Recovery Team, an organization formed to support Propositions Schwarzenegger was in favor of; the Nicholas Family Trust, a private trust that gives money primarily for children's social services; and Jeff Denham for State Senate, a Republican Senator who received several awards from the California State Sheriffs' Association and other law enforcement groups (Jessica's Law, 2006). Further cementing his support, Governor Schwarzenegger endorsed Proposition 83, which George and Sharon Runner officially sponsored. Schwarzenegger, San Diego County District Attorney Bonnie Dumanis, and Harriet Salarno, President of Crime Victims United of California all supported the official "yes" vote position on the ballot. "Citizens for Responsible Elections," the group opposing Proposition 83, collected $30,000 in donations (Jessica's Law, 2006).

The Proposition System and Child Victim Rhetoric

Unlike A.B. 888, Proposition 83 consisted of both legal text as well as statements in favor and against the bill from opponents and proponents. Its actual substantive legal text focused heavily on child victims. In addition to mentioning children a total of 109 times, the bill initiative reduced the age difference between offenders and victims (from ten years to seven years) that qualified as aggravated sexual assault of a child, prohibited registered sex offenders from living within 2,000 feet of any school or park, made possession of child pornography a felony, and

expanded the definition of violent crime to encompass continuous child sexual abuse, amongst others.

Yet due to its location within the Proposition system, this legal text could be supplemented with additional literature and information distributed widely to the public and used on the ballot itself. Much of this literature focused on "protecting" the community by heavily emphasizing victims and community safety. In the hierarchy of constituent issues, according to Runner, public safety was at the top: "there's nothing more basic than keeping people safe…And there's nothing more basic than keeping children safe…" (George Runner, per. comm.). The ballot statement in favor of Proposition 83 utilized rhetoric of danger, protection and child victimization, stating:

> Our families deserve the protection of a tough sex offender punishment and control law…WE CANNOT WAIT ANOTHER DAY TO PROTECT OUR KIDS. Proposition 83…will protect our children by keeping child molesters in prison longer; keeping them away from schools and parks; and monitoring their movements after they are released. A rape or sexual assault occurs *every two minutes.* A child is abused or neglected *every 35 seconds.* Over 85,000 registered sex offenders live in California. Current law does not provide Law Enforcement with the tools they need to keep track of these dangerous criminals. *Secrecy is the child molester's biggest tool.* How can we protect our children if we don't even know where the sex offenders are? (California Proposition 83 2006)

Thus, while Proposition 83 legally applied to a wide range of victims, (and offenders) the statement in favor almost exclusively discusses child victims. This statement is intended to induce fear, describing the myriad dangers that sex offenders post to public (and child) safety.

The ballot also used statistics to emphasize sexual violence against children. For example, one section states, "More than two-thirds of the victims of rape and sexual assault are

under 18 years of age," while another discusses the dangers of child pornography: "Child pornography exploits children and robs them of their innocence…Statistics show that 90% of the predators who molest children have had some type of involvement with pornography. Predators often use child pornography to aid in their molestation" (CA Proposition 83). It also mentioned the dangers of the Internet, pointing out that predators use it to lure children, and that heavier penalties for such acts were necessary "to reflect society's disapproval" of such activities. Using these statistics, proponents of Proposition 83 were able to drum up fears about child safety.

While Proposition 83 proposed several crucial reforms to the SVP Act, public materials about the bill did not explain the category of crimes that qualified individuals for sexual predator designation, define sexually violent offenses, or explain what was meant by a "diagnosed mental disorder." The rebuttal to Proposition 83, written by Carleen R. Arlidge, at the time the President of the California Attorneys for Criminal Justice, discussed existing SVP laws, but used them to point out why Proposition 83 was unnecessary. It stated that California already had laws that protected the public from "child molesters" and "dangerous sex offenders," and that the Initiative applied far beyond such persons (California Proposition 83 2006). This opposing statement both employed the rhetoric of child victims and simultaneously reinforced associations between the sexually predatory, danger, and sexual offenses against children.

In conjunction with information presented on the ballot, "Yes on 83" conducted an extensive public relations campaign wherein they used donations to distribute materials encouraging voters to vote in favor of the Proposition. The "Yes on 83" website consolidated news articles and press coverage discussing the initiative favorably, consolidated and highlighted key provisions of the bill, advertised volunteer opportunities, and posted photos of politicians (including Schwarzenegger) who supported it (Yes on 83 2006).

Despite fiscal concerns about the Sexual Predator Punishment and Control Act expressed by the legislature, Proposition 83 went though the initiative process with an identical budget, estimating net costs at "several tens of millions of dollars initially, growing to a couple hundred million dollars annually within ten years" (California Proposition 83, 2006). The statement in favor argued that these costs would be partially offset by court and parolee fees authorized by the measure (though that would be contingent on offenders' ability to pay). It also speculated that GPS would be a "deterrent" to committing new crimes, which would save the state money, particularly because offenders would also have to pay for their own GPS monitoring. The rebuttal to Proposition 83 pointed out that taxpayers would pay upwards of 500 million dollars for measures that would not really increase safety.

Ultimately, Proposition 83 passed with 70.5% overall voter support, and in 57 out of 58 California counties. Of the 132 approved ballot measures between 1912 and 2016, only 17 passed with 70% support or higher.

DISCUSSION AND CONCLUSION

These findings demonstrate how the Proposition system allows for the incorporation of rhetoric in California's SVP Act that the legislative system does not, justifying different legal penalties for sexual predators at each point in time. While lawmakers in 1996 relied on civil law and the rhetoric of risk management to gain support for and implement the original SVP Act, legislators in 2006 used the ballot initiative system to circumvent traditional legislative processes. By opting to enact changes via popular vote, they were able to incorporate and capitalize upon voter fears, using the rhetoric of child victims to convince voters to approve a

more punitive law. These results demonstrate how the use of popular democratic systems may be used to heighten public emotions in the service of creating more punitive laws.

My findings show how politicians and legislators can take advantage of cultural anxiety about sex crime to pursue their own political agendas. In contrast to past work suggesting that moral panic narratives usually emerge from the public and gain legislative support (Herdt 2009), I demonstrate that such panics may also emerge from legislatures and legislative bodies. Changing political environments, then, play an integral role in how such narratives become integrated into law, impacting both the type and degree of emotion legislators are able or choose to employ.

As both a legal document and a public spectacle, the initiative process facilitates—in fact encourages—the integration of emotional rhetoric, relying on public dramatizations that provoke fear and anxiety (Irvine 2008). Ballot information focuses almost exclusively on child victims, both exaggerating the sexual violence they face and emphasizing that violence against children is everywhere (the internet, schools and parks, etc.). In contrast, the 1996 SVP Act rarely discusses child victims or victimization. Child victim rhetoric enters into discussions only when the bill moves to the public domain and is signed into law—the first time legislative discussions become overtly emotion-based.

Irvine (2008) found that such dramatizations occurred in "arenas of discursive action" such as school board meetings, legislative hearings, and town-hall events—"the hypothetical public sphere of rational discourse." My results extend these findings, demonstrating that the ballot initiative system may constitute a new and wider arena for such discourse, providing a vast public forum for a rhetoric of "contamination" (Lynch 2002: 539). Historically, such rhetoric has led to extreme policies and measures, ranging from laws banning male homosexuality to anti-

immigrant national barriers to Nazi anti-Semitism and the extermination of Jews in Europe. Thus, the emotions that sex crimes tend to bring about, combined with the lack of traditional legislative checks and balances in this particular political environment, could lead to ever-more punitive policies, and to a more dramatic degree.

That the initiative process is termed "citizen led," while citizens play little role in designing initiatives (Camp 2008) also allows political actors to effectively absolve themselves of blame for such policies. In the case of Proposition 83, citizens did not actually design or give feedback on the bill, yet were encouraged to distribute materials, advocate for the bill, support it, and, of course, vote for it. Yet the authors of the bill justified its need using rhetoric about public demand and constituent frustration with existing laws. This demonstrates one way in which politicians may manipulate the idea of popular sentiment to claim that policies are what the public wants, when in fact they are simply policies that were too polarizing to pass through the legislature. This also suggests that the narratives politicians create about moral panics (the hypothetical concepts and constituents to which they attempt to appeal) may influence policy as much or more as those panics themselves (Barker 2007, Cohen 2011, Small 2015).

These findings have important social, legal, and political implications, in large part because the use of the Proposition system to modify criminal law in California continues to grow. In the past five years, California Propositions have attempted to change felony and misdemeanor sentencing, soften regulations applying to juvenile offenders, and overturn the death penalty (Secretary of State 2019a). Propositions have also begun to directly target sexual crimes and offenders, either by exempting sex crimes from criminal reform (for example, Proposition 47 reformed punitive drug sentencing laws, but not for registered sex offenders), or, as in the case of Proposition 83, directly changing sex offender laws and policies.

It is important to note that these results apply to California and California's SVP Act specifically. However, as California often leads the way in legal policy for the United States, these results may provide a starting point for researchers to further examine national shifts towards popular democratic systems, particularly their role in regulating crime. Another potential area of future work that warrants attention is the continued elevation of some child victims over others (identifying citations). In the case of Proposition 83, we see this in the way the law both calls for child protection and expands categories of juvenile crime to make young offenders eligible for indefinite confinement. This finding adds to contemporary scholarship indicating that child sex offenders tend to be treated similarly to adult offenders, with little distinction in the approach to punishment or treatment (Chaffin 2008), and demonstrates where the limitations to the emotional appeal of children may lie.

Overall, this study demonstrates how the Proposition system allows for the incorporation of rhetoric in California's SVP Act that the legislative system does not, justifying different legal penalties for sexual predators at different points in time. Legislatures and legislative policy are certainly flawed, but, when they enact punitive polices, they do so within institutional norms and constraints that popular democratic systems do not face. As the United States becomes more politically divided, we must examine how these systems facilitate the incorporation of heightened public emotions into law and policy, and the implications that incorporation may have for legislating crime.

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CHAPTER 3

Ideal Victims and Monstrous Offenders: How the News Media Represent Sexual Predators

Abstract:

Drawing on content analysis of 323 *Los Angeles Times* articles published between 1990 and 2015 that include the term "sexual predator," this study systematically investigates how news reports represent sexual predator victims, crimes, and offenders, constructing specific images of the sexual predatory in the process. Results demonstrate that representations of the sexually predatory are aged and gendered: stories about child victims encompass more sexual violence, graphic descriptions of that violence, more male victims, and older offenders. Articles use child victims as a rhetorical tool to emphasize the "predatory" nature of offenders and justify retributory violence or harsh legal punishment against sexual predators. Narratives about adult victims focus mainly on women, framing them as responsible for their victimization and minimizing their importance relative to child victims. The cumulative effect of this coverage narrows representations of victims and violence, contributing key dynamics to both the social and legal predator template.

INTRODUCTION

While several recent, high-profile sexual assault and harassment cases have sparked an ongoing national dialogue about "sexual predators," the rise of predator discourse predates the series of events leading up to the #MeToo movement last year. In fact, over the past 15 years, the predator discourse has become central to how people conceptualize and discuss sexual violence, both constitutive of and reflective of expanding and increasingly punitive sex offender laws in the United States (Meiners 2009) Janus (2006) points out that, "There is increasingly myopic focus on the 'predator' as personifying the danger to [communities]…the predator template [has become] more and more central to how we think and talk about sexual violence" (131). But how do various institutions (legal, cultural, and otherwise) lend meaning to this term?

Legally, California's 1996 "Sexually Violent Predator Act" categorizes and defines "sexual predators" as pathological, repeat, and violent offenders. Legal descriptions of criminal sexual acts provide a framework for the public to interpret deviant sexuality—the language they use is imbued with meaning (Jenkins 2004). The use of the term "sexual predator" sets up a polarizing and extreme image from the very beginning, "…convey[ing] a medieval image that has never entirely been eliminated from Western images of the frightening, the disgusting, the horrible, the dangerous, and the unbearably, and erotically, fascinating" (Douard 2008).

Yet, through colloquial use, legal terms also come to take on additional social and cultural meaning, particularly in the case of sex crimes and sexual offenders. The term "pervert," for example, first a legal category, now brings to mind any number of seemingly depraved sexualities. Similarly, the term "pedophile" has become "our most frequented *cultural and linguistic toilet," used to symbolize a variety of revulsions (Kincaid 1998).* While legal language

thus sets the stage for exaggerated interpretations of sexual predators (Janus 2006), other cultural arenas likely reflect and shape how this term comes to be understood.

News media represent one such arena. As a domain through which meanings of crime and deviance are "constructed, attributed, and enforced" (Ferrell and Websdale 1999), the way the news media use the term sexual predator (both the stories they select and the language used within those stories) construct part of its socially structured meaning (Hartley 2013). Yet, while research documents news media emphasis on "sensational" sex crimes (Kitzinger 2004, Greer 2012) and the legislative and political results of the "panic" this can create (Lancaster 2011, Leon 2011, Krinsky 2016), studies have yet to examine how media representations of sex crimes can lend symbolic meaning to sexual violence *itself*.

In contrast, this study systematically investigates how news reports represent sexual predator victims, crimes, and offenders, constructing specific images of the sexual predatory in the process. Drawing on content analysis of 323 *Los Angeles Times* articles published between 1990 and 2015 that use the term "sexual predator" anywhere in their text, I demonstrate that aged and gendered narratives contribute key dynamics to the sexual predator template. Stories about the youngest victims encompass more sexual violence, graphic descriptions of that violence, more male victims, and the oldest offenders. News media use these same child narratives as a rhetorical tool to emphasize the "predatory" nature of offenders and justify retributory violence or harsh legal punishment. In contrast, narratives about adult victims (which often originate from legal and police discourse) focus mainly on women, often framing them as responsible for their victimization, and effectively removing them from predator discourse.

LITERATURE

Sex Offender Laws, Symbolic Meaning, and Media

"Inappropriate" sexual desire has long been a societal "vector of oppression," marking the deviant and different (Nardi and Schneider 2013). Yet, what defines sexual deviance and perversion, the way in which sexual "deviants" or "perverts" have been legally controlled, and what constitutes various sexual identities varies across history (Chauncey 1994, D'emilio 2014). California's Sexually Violent Predator law reflects general trends in increasing sex offender regulation in the United States over the past 25 years, which include augmented mandatory minimum sentencing, expanded probation requirements (including GPS monitoring, polygraph tests, and internet use bans), and required public registration in all 50 states for convicted adult sex offenders (37 states require juvenile sex offender registration) (Jenkins 2004, Meiners 2009).

"Moral panic" theories posit that media amplification of fear and deviance has led to these reactionary and extreme political and legal responses (Ferree, Gamson et al. 2002, Jenkins 2004). More contemporary understandings of moral panic point out the increasingly blurred divide between media and society, particularly with the advent of social media. Such understandings point out that it may be more useful to think of the ways in which the media socially organizes problems, rather than how it distributes or amplifies them (Fischel 2016).

Sexually Violent Predator Laws highlight the complicated relationship of timing and directionality between media and law. Use of the term "sexual predator" in media discourse grew the most *after* the implementation of Sexually Violent Predator laws. Between 1950 and 1992, the term's non-legal use was rare (practically nonexistent). However, newspaper articles, television shows, internet watchdog/advocacy forums, and political candidates now frequently

mention sexual predators (Filler 2002).[3]

Fischel (2016) points out that, in prevailing theories of media influence and moral panic (Cohen 2011), the law acts as the endpoint—it is the ultimate formalization of social outrage. But, Fischel (2016) points out, this view does not allow for the notion that the law may also shape "prevailing mythologies, stigmas, and stereotypes" (2016). Specifically, the law itself can frame and identify sexual harm:

> The presence of the law makes the problem of sexual violence one of criminal justice, rather than, say, public health, social structures, inequality, or gender enculturation. Violence is individuated, pathological, and most importantly, punitively fixable through the juridical arm of the state, and by extension, the juridical view of the [public] (37).

The law has the potential to thus be productive, rather than simply reactive.

Yet the news media also influence *how* the law operates across bodies by shaping popular understandings of victims and offenders; the way in which news media construct and reconstruct the criminal as social and political concerns to the public attribute symbolic meanings to crime (Ferrell and Websdale 1999, Fischel 2016). This process both generates its own images and "images of images," as media incorporate and reproduce narratives filtered through police, legal representatives, politicians, and others (Ferrell and Websdale 1999). Because the public is largely distant from crime and criminal subcultures, these subcultures can come to be defined by media coverage—particularly in the case of sexual predators, as Sexually Violent Predator laws remain obscure to the general public (Ferrell, Milovanovic et al. 2001, Cohen and Jeglic 2007). In contrast to a moral panic understanding of media's role, this process is *constant and evolving*.

[3] My own data analysis of the *Los Angeles Times* indicates that, of the 324 articles that used the term "sexual predator" within the sample period (1985-2015), zero articles appeared that used the term between 1985 and 1990. From 1990-1995, that number rose to 27, then 123 between 1996 and 2000 (the peak amount over any five-year period of the sample), then 102 between 2000 and 2005, and, finally, to 72 for the remainder of the sample time period.

Thus, how media construct understandings of crimes, victims, and offenders in the context of the "sexual predatory" can tell us how this term takes on symbolic meaning, and in more nuanced ways.

Media, Sex Crime Victims, and "Entertainment"

Yet, while the news media present crime and crime control as social and political concerns, they also present them as entertainment (Fishman and Cavender 1998). Sex crimes in particular receive vast amounts of "lowest common denominator" journalism coverage, which highlights violent, "depraved" sexual conduct (Kitzinger 2004, Jewkes 2015). The further a crime departs from cultural norms, the more newsworthy or intrinsically entertaining media tend to consider it (Pritchard and Hughes 1997, Bok 1998). Jewkes (2005) calls this "oversaturation of the extraordinary"—extremely rare crimes, such as random stranger and sexual violence, and victims perceived as more vulnerable (women, children, etc.), receive disproportionate attention (Naylor 2001, Lynch 2002, Wilson and Silverman 2002, Quinn, Forsyth et al. 2004). Within such stories, media focus on the most "extreme" cases—serial rape, extremely old victims (Meyers 1996), multiple child victims (Chermak 1998), and the abduction of children by strangers (Wilczynski and Sinclair 2016).

Such reporting evocatively and graphically describes violence and victims (Ferrell and Websdale 1999). For example, discussions of child victims tend to equate violence with sexual violence, even if evidence of the latter does not exist (Levine 2006). News media prioritize stories of child victims over those of adult victims (Jenkins 2004), presenting them as blameless, asexual, and androgynous (Kincaid 1998) (Krinsky 2016). In contrast, adult victims are primarily women, and held accountable for being in the wrong place at the wrong time, "questionable" sexual histories, or poor judgement (Meyers 1996). Failing to perform hegemonic femininity—

by being "oversexualized," working outside of the home, having same-sex relationships (Collins 2004)—exacerbates the likelihood of this framing (Greer 2007, Jewkes 2015).

Classic literature on victimization points out that the term "victim" is not objective, and that both individual as well as social-level understandings of crime impact how victims are perceived. The public tend to give certain "ideal victims"—those that possess various socially desirable characteristics—more legitimate victim status (Christie 1986). Best (1997) argues that ideas about "ideal" victims transform such victims into symbolic figures that help explain various social ills and problems, impacting societal perceptions of intimate violence and individual responsibility (Dunn 2010).

Perceptions of victim agency impact the degree to which they evoke sympathy or are considered ideal. "Pure" victims without agency are portrayed as blameless, but victims perceived as "impure" can be judged for this same lack of agency. In contrast, victims portrayed as having agency (often called "survivors") tend to evoke public admiration and appeal to broader audiences. The degree to which victims meet these expectations impacts the extent to which they are able to establish or access victim identity (Dunn 2004, Dunn 2008). Lu (Cho, Gee et al. 2016) adds that race further impacts understandings of victim blameworthiness. For example news media depictions of Asian Americans as "model minorities" allows them to access "legitimate" victim status by transforming their experiences into community trauma and shared loss. In contrast, victims of color who do not fit into this model remain "outsiders," preventing access to status as ideal victims.

Yet such analyses of media victim coverage and understandings of victims tend to be partial, focusing on one type of victim only (for example, adult victims only, adult women only, children only, or high-profile cases) (Christie 1986, Meyers 1996, Levine 2006, Dunn 2008,

Cheit 2014). Greer (2012) notes that existing scholarly work in this area thus tends to make general conclusions based on pieces of data, rather than a complete picture. In addition, this type of partial inquiry does not fully account for the impact of age and gender differences in victim representation. Meyers' (1996) research on media coverage of violent crime against women notes that framing in this instance reinforces stereotypes that blame women for the violence enacted against them, but does not look at media coverage of men or of child victims. Anastasio and Costa (2004) analyze media treatment of both men and women who are sex crime victims and find that men are more personalized in media coverage, and that this personalization is associated with increased empathy, but do not include child victims in their analysis. Correspondingly, research on media coverage of child sex crimes finds that violent coverage of extreme crimes distracts from more prevalent sources of harm to children and reduces child sexual autonomy, but lumps all child victims together by gender and does not look at how this coverage compares to that of adult victims (Kincaid 1998, Kitzinger 2004), or the way that increasingly child-centric narratives may impact news media focus on adult victims.

But Fischel (2016) points out that "sex across age means different things for differently gendered and sexual subjects," pointing out that, in order to understand differences in how people construct meaning regarding what constitutes violence and consent, research must take into account the age, gender, and sexuality of both victims and offenders (50). Thus, examining the intersecting role of victim age and gender in sexual predator narratives can contribute important information regarding how victim hierarchies are created and reproduced, why some victims are valued over others, and how those hierarchies may reflect and feed back into law and understandings of "ideal" victims.

Media and "Monster" Offenders

Such narratives can also contribute information about how the public comes to view certain categories of sex offenders. Much news media research focuses on victim framing only, without examining how it may shape representations of offenders (Meyers 1996, Kitzinger 2004). When news media does discuss sex offenders, it tends to conflate violence and pedophilia (Levine 2006, Lancaster 2011), and perpetuate the "bogeyman fallacy" that those who commit sex crimes have unique, unknown, and monstrous identities (Leon 2011). These "predatory pervert" discourses highlight the dangers of "stranger" offenders (Greer 2003, Lancaster 2011), and can thus act as vehicles for "community "togetherness," (Jewkes 2015) and facilitate coded and implicit racism via discussions of "safety" and "quality of life" (Nagel 2003).

Discussions of "specialized sexual perversion," such as pedophilia, highlight white, male offenders (Lotz 1991, Kitzinger 2004, Lancaster 2011). Yet, the language of "predatory" sexuality is often associated with black men (Lundman 2003, Callanan 2012, Horeck 2013), and the 1990's "superpredator" dialog presented young, inner-city (black) adolescent males as violent, dangerous, and morally depraved (Moriearty 2009). News media coverage of sexual predators lies at the intersection of these two potentially competing frames, and it remains unclear which they fall into. Such coverage thus provides the opportunity to better understand how offenders are represented to the public, and the potential ways in which those representations contribute to racialized and aged generalizations about sex offenders, in addition to victims.

Constructing Sexual Predators

Overall, while research documents news media emphasis on sex crimes (Greer 2007, Greer

2012), types of victims (Kitzinger 2004, Greer 2007), and the impact of news media in shaping the overall "discursive field" of sex offender punishment (Lancaster 2011, Leon 2011, Krinsky 2016), studies have yet to examine how media coverage of sexual predators, crimes, and victims contributes to evolving discourses of sexual violence. In particular, previous work is partial: it tends to disconnect or isolate concepts that are better understood together: victims and offenders, types of victims, age and gender, and legal and social institutions.

Motivated by research on cultural criminology (Ferrell and Websdale 1999) and news media framing (Benson and Saguy 2016) this article examines how news reports frame the sexually predatory by drawing attention to various characteristics of violence, victims, and offenders, and minimizing others. It draws on quantitative and qualitative content analysis of 323 Los Angeles Times articles using the term "sexual predator" that were published between 1990-2015.

DATA AND METHODS

Data for this paper come from 323 news reports the used the term "sexual predator" published between 1990 and 2015 in *The Los Angeles Times.* The year 1990 is an ideal time to begin this sample, as it predates the rapid growth of new sex offender legislation between 1994 and 1996, as well as growth in the use of the term "sexual predator" (Filler 2002). As a widely read, but also regional, publication, the *Los Angeles Times* is an ideal source to examine the way in which the term sexual predator intersects with both California and national politics. The Proquest News and Newspaper Database contains a full, searchable electronic archive of *Los Angeles Times* issues dating back to 1985. To create my sample, I searched for articles that used the term "sexual predator" anywhere in the text and were published any time between January 1,

1990, and October 5, 2015, when the search was conducted. This required using two databases: the pre-1997 full-text Los Angeles Times database, for results found between January 1, 1990 and December 3, 1996; and the Los Angeles Times full text database, for results found between December 4, 1996, and October 5, 2015. The former search produced 60 results and the latter, 345 results for a total preliminary sample of 405 articles. While the Los Angeles Times searches occasionally produced multiple versions of the same article (for "local" editions of the paper), my search produced a fair amount of non-relevant and redundant topics. As a result, I manually reviewed and eliminated duplicates, as well as unrelated entertainment reviews; science/animal articles; and news headline and byline summaries. After eliminating these articles, my final sample encompassed 323 articles.

Coding

I combine qualitative and quantitative analyses of media content in order to look both at agenda setting and framing of sexual predators. Scholars note that media analysis requires substantial interpretation and choice—in what counts as "important" text to analyze, which qualitative examples to select, and what narratives authors identify as meaningful and salient (Entman and Rojecki 2001). Combining quantitative and qualitative analysis mitigates this bias to some extent—quantitative analyses allow me to make broader claims, examine trends, and determine to what extent news media emphasize different ideas and concepts, while qualitative analyses capture the nuances in language and description in media representations of sexual predators.

I used my existing knowledge of literature about the relationship between the media, crime, and sexuality; as well as California laws and policies, to create 79 variables with which to

quantitively code my analysis.[4] I coded at the article level for all 323 of the articles in the sample. All variables in the sample were constructed as dichotomous, coded for whether or not the article about sexual predators mentioned that particular variable; thus, all codes are independent of one another. Where applicable, I coded and created variables matching the categories used in national crime data, while also accounting for legal specifics that shape the definitions of certain crimes (for example, anyone age 18 or up is considered an adult, legally speaking, and was coded as such). Matching variable categories to national crime data also facilitated comparison between the results of my analysis and official statistics on crime, which I discuss in more depth at the end of this section. To confirm intercoder reliability, a colleague randomly selected and coded 20 variables from 20 articles. I then compared each of these variables to my own coding using Reliability Calculator (Freelon 2010), which calculates Krippendorf's Alpha, currently considered the standard measure of reliability for media content analyses (Hayes and Krippendorff 2007). Results confirmed associations between .8 and 1 for all variables, interpreted as "near perfect" agreement.

In order to evaluate the types of crime and the degree of violence in articles that discussed sexual predators, I included several crime category variables in my initial analysis. Initial categories included whether an article mentioned—in the case of either an adult or child victim—kidnapping/abduction, battery/physical assault, abuse of any sort, sexual harassment, robbery, and a variety of sexual crimes, including sexual battery, nonconsensual oral sex, rape, or serial rape. I also coded for crimes with child victims, including molestation, child pornography, and lewd conduct with a child.

[4] All of these variables did not come up when I coded the articles, and many that did come up appeared only minimally. I discuss the variables relevant to my findings.

Based on the incidence of appearance and the definition of "violent crime" according to the National Crime and Victimization Survey (NCVS) and Uniform Crime Report (UCR) (the two main national crime reports collected by the US Department of Justice), I condensed these categories into four major areas of violent crime: *murder*, *kidnapping* (considered violent under California law, but not included in the NCVS or UCR), *physical abuse/assault*, and *sexual assault*. In the state of California, all sexual crimes against adults fall under the larger legal category of "sexual assault." Similarly, all sexual crimes against children, including child molestation, fall under the category of "lewd or lascivious acts with a minor." For this reason, a condensed variable for all sexual crimes for each age group proved to be ideal.

I used three additional variables to measure the incidence of violent crime in the data. The first variable measured whether or not the article mentioned a *repeat offender*. The second was whether the article mentioned *multiple victims* (whether from the same offender or other offenders). Finally, I created variables to measure the relationship between victims and offenders: *stranger*, if the offender was unknown to the victim (which was often specifically mentioned), and *friend or family*, if the offender was a family member or acquaintance. The *stranger* variable is particularly important to the analysis, as understandings of what constitutes "predatory" behavior in SVP diagnoses and violent behavior in other contemporary sex offender laws is tied to victim offender relationships (D'Orazio, Arkowitz et al. 2009). Research indicates that, generally, stranger violence is considered more serious and "criminal" than violence between intimates (Hessick 2007).

In addition to crime variables, I constructed age, gender, and race variables that encompassed the major age categories of victims and offenders in the analysis. Due to the corresponding legal definition, any victim age 18 or above was coded as an *adult*. Oftentimes,

adult victim age was specifically mentioned, although sometimes the victim was simply referred to as an "adult." If a victim was identified as "college-aged," I put them in this category, as well. I also created variables for *victims below age 12* and for *victims aged 12-17*. When specific age was not mentioned, anyone called a "child," "young child," "young boy," or "young girl," in the analysis fell into the under 12 category. In an effort to be conservative, anyone described as a "teenager" fell into the 12-17 category, and cases where victim age was unclear or not mentioned were coded as "missing." These categories align with NCVS and UCR data collection; the NCVS collects data on individuals age 12 or above only, while the UCR has select data available on victims below age 12.

Similarly, I created three age variables for offender age categories in the analysis: *offender under age 30*, *offender age 30-39*, and *offender age 40 or above*. These categories correspond generally with data from the UCR (Greenfeld 1997), but are slightly more broad (data there separate offender age into categories spanning five years, but for the purposes of the analysis, this level of detail was not necessary). I also created variables for victim and offender gender (*male*, *female*, or whether *both male and female* victims or offenders appeared in the same article), and variables for offender race. I coded for whether articles *mentioned or pictured in photos* if offenders were white, Black, Hispanic, or "other" race (including Asian and mixed race individuals). Because pictures required visual interpretation of race, I double checked this variable by looking up offenders by name to confirm my results, coding any instances where I could not confirm an offender's race, or when race remained ambiguous, as missing. Although I also created categories to code for victim race, I found that this was mentioned rarely, if ever.

A few additional variables of note to the analysis were those measuring spaces classically thought of as "dangerous" within contemporary discussions of sexual assault and violent crime,

such as the Internet, schools, college campuses, and even churches (due to large clergy abuse scandals during the study time period). I also included a variable indicating whether the article discussed that sex offender laws should be *less* or *more punitive*, in order to gauge the tone of the dialog about sexual predators in media discourse. I exported and merged coded articles from Google forms to Excel, then imported that dataset into Stata statistical software for analysis.

For qualitative analysis, I use discourse analysis to examine major frames that appeared when discussing sexual predators, specifically choices of words and quotes that demonstrated ideologies surrounding victims and sex offenders in the articles. This approach allowed me to critically examine the ways in which key themes—such as innocence, guilt, and deviance—impact conceptions of sexual predators. I created Excel sheets organized by theme with quotations relevant to key concepts such as age, violence, gender, sexuality, and culpability.

Comparative Statistics

In order to evaluate the quantitative trends in this analysis, it is helpful to use comparative statistics, yet important to note limitations of national statistics on crime and of comparisons themselves. First, the NCVS and the UCR contain methodological and definitional differences: the NCVS includes estimates of both reported and unreported crimes from a nationally representative sample of U.S. households, while the UCR collects data on crimes recorded by the police and is based on the actual counts of offenses reported by law enforcement. The NCVS also excludes crimes against children under 12 years, although victimizations against these persons may be included in the UCR. The crimes measured in each are overlapping, but not identical—most importantly, the UCR does not include sexual assault, a variable extremely relevant to this analysis (Barnett-Ryan, Langton et al. 2014). Finally, and more sociologically

speaking, reporting of crime depends upon a number of factors, including the socioeconomic, racial, and gendered characteristics of police, victims, neighborhoods, etc. When viewing any crime statistics, it is important to keep these limitations in mind.

There are also several important limitations when comparing the dataset in this analysis to national crime data. First, these datasets essentially measure separate things: the sample data looks at media *framing*, which we should expect to be substantively different than actual crime rates. Second, the sample data set covers a range of 25 years, but there are not enough observations in any single year to break down my data into a yearly unit of analysis for comparison. Finally, while I do my best to match all variables to national data, the strongest comparison for this analysis would be a uniform, consistent dataset. This simply does not exist. Regardless, the comparisons I include provide a way in which to conceptualize generally how media representation of crime, victims, and offenders compares to actual recorded incidences of violence, victimization, and crime perpetration, providing a useful starting point for analysis.

FINDINGS

The following section examines how *Los Angeles Times* articles represent sexual predator victims, crimes, and offenders. In the first section, I introduce overall statistics on the type of coverage included in articles using the term "sexual predator," showing that they most often encompass violent, sexual crimes committed by repeat offenders, containing multiple victims, and committed by strangers. In the second section, I show that articles over-emphasize crimes against children (younger children in particular), relative to crime against adults. They sexualize crimes against child victims, using graphic depictions of violence to do so. Narratives present adult victims (the majority of whom are women) as responsible for their victimization, yet

discuss the protection of children as a collective national responsibility. The final section shows that articles use these same child victim narratives as a rhetorical tool to justify violence against sexual offenders. The cumulative effect of these results illustrates how media construct and reinforce hierarchized victimhood using child victims, and use child victim narratives to dehumanize offenders and generalize them as pedophilic.

Persistent and Graphic Sexual Violence

Figure 1 shows trends in the number of overall mentions of the term "sexual predator" over the sample time period. The number of mentions peaks in 1998, followed closely by 1996 and 2002. Table 1 provides overall statistics on all major relevant variables from the sample, which give an overall idea of major trends regarding age and gender of victims and offenders, as well as the distribution of crimes covered in the sample. From these initial trends, I move to more detailed qualitative and quantitative analyses of age, gender, and crime, discussing the way in which these factors intersect to produce a particular image of a "sexual predator."

Figure 1: News Reporting on Sexual Predators, *Los Angeles Times*, 1990-2015 (N = 323)

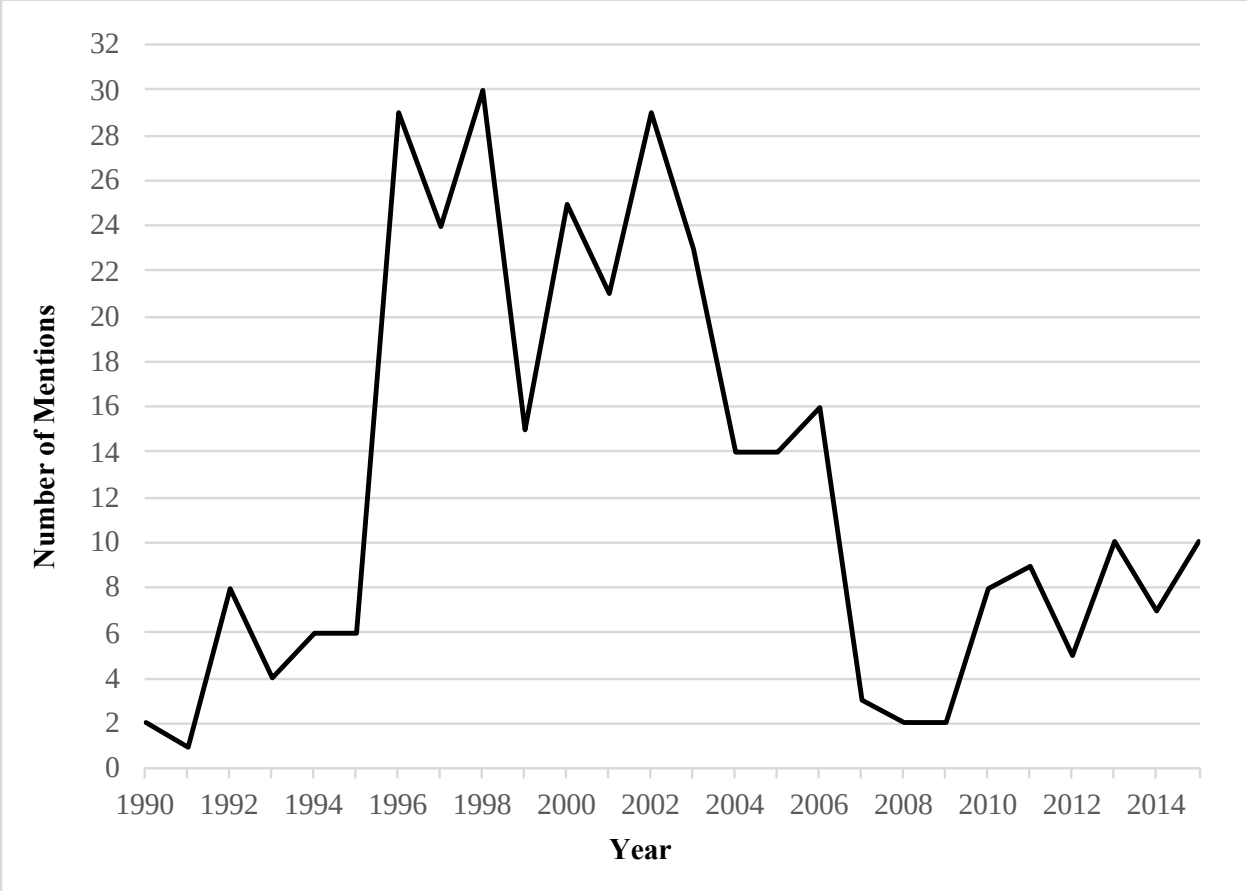


Table 1: General Demographics, *Los Angeles Times* Reports on Sexual Predators, 1990-2015

Victim Age	
Under age 12	80 (28%)
Age 12-17	60 (21%)
Age 18 or above	141 (50%)
	(N=281)
Offender Age	
Under age 30	34 (19%)
Age 30-39 years	51 (28%)
Age 40 or above	98 (54%)
	(N=183)
Victim Gender	
Male	64 (25%)
Female	175 (68%)
Both male and female mentioned	17 (7%)
	(N=256)
Offender Gender	
Male	248 (95%)
Female	12 (5%)
Both male and female mentioned	2 (1%)
	(N=262)
Offender Race	
White	68 (67%)
Black	13 (13%)
Hispanic	12 (12%)
Other or multiple mentioned	8 (1%)
	(N=101)
Crime Categories	
Sexual assault	266 (83%)
Murder	67 (21%)
Kidnapping	48 (15%)
Physical Abuse	30 (9%)
	(N=323)
Repeat Offenders	
Repeat Offenders	232 (72%)
	(N=323)
Multiple Victims	
Multiple Victims	222 (69%)
	(N=323)
Victim-Offender Relationship	
Acquaintance, friend, or family member	72 (40%)
Stranger	107 (60%)
	(N=179)

Table 1 shows that articles in the sample focus on four major categories of violent crime: 83% discuss sexual assault, 67% discuss murder, 48% discuss kidnapping, and 30% discuss physical abuse of some kind. Seventy-two percent of articles discuss repeat offenders, 79% of which mention sexual assault as a corresponding crime. However, as shown in Figure 2, when broken down by crime, repeat offenders showed up relatively evenly within each category, in fact appearing most (87 percent of the time) within articles about physical abuse. Similarly, while 69% of articles mention multiple victims, 79% of which mention sexual assault as a corresponding crime, Figure 3 shows that the distribution of articles discussing multiple victims was almost identical within the four most frequent crime categories that appeared in the analysis. National Crime Statistics from 2002 provide some perspective with which to view these results. In 2002, murder and forcible rape, which appear most in the sample data, accounted for less than 1 percent of the offenses that made up the US Crime Index (Investigation 2002). Aggravated assault, which does not include child abuse, made up 7.5% of overall crime reported, a marked contrast to the 30% of articles about physical abuse in the data (which do include child abuse).

Figure 2: Repeat Offender Percentage within Crime Category, *Los Angeles Times* Reports on Sexual Predators, 1990-2015

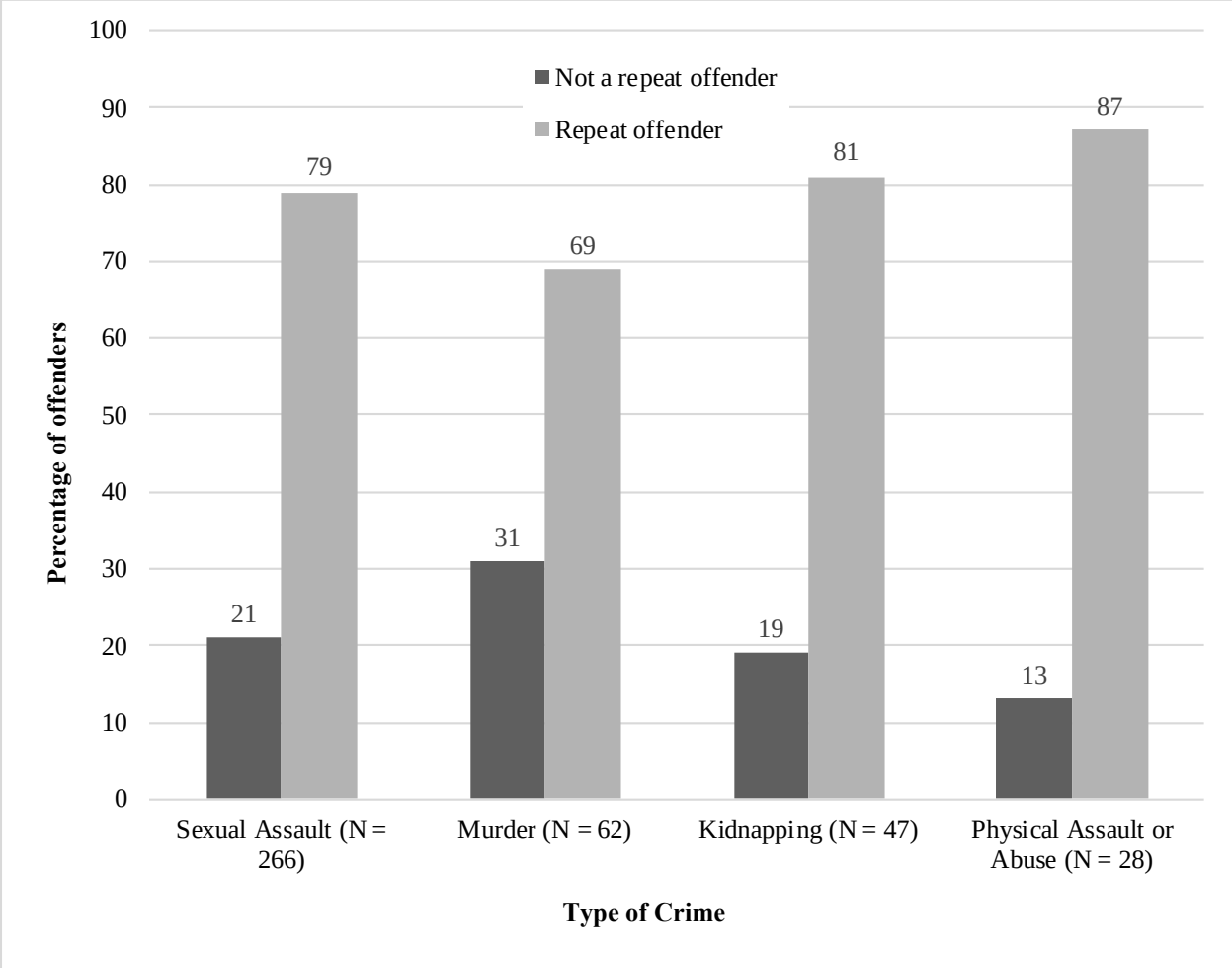
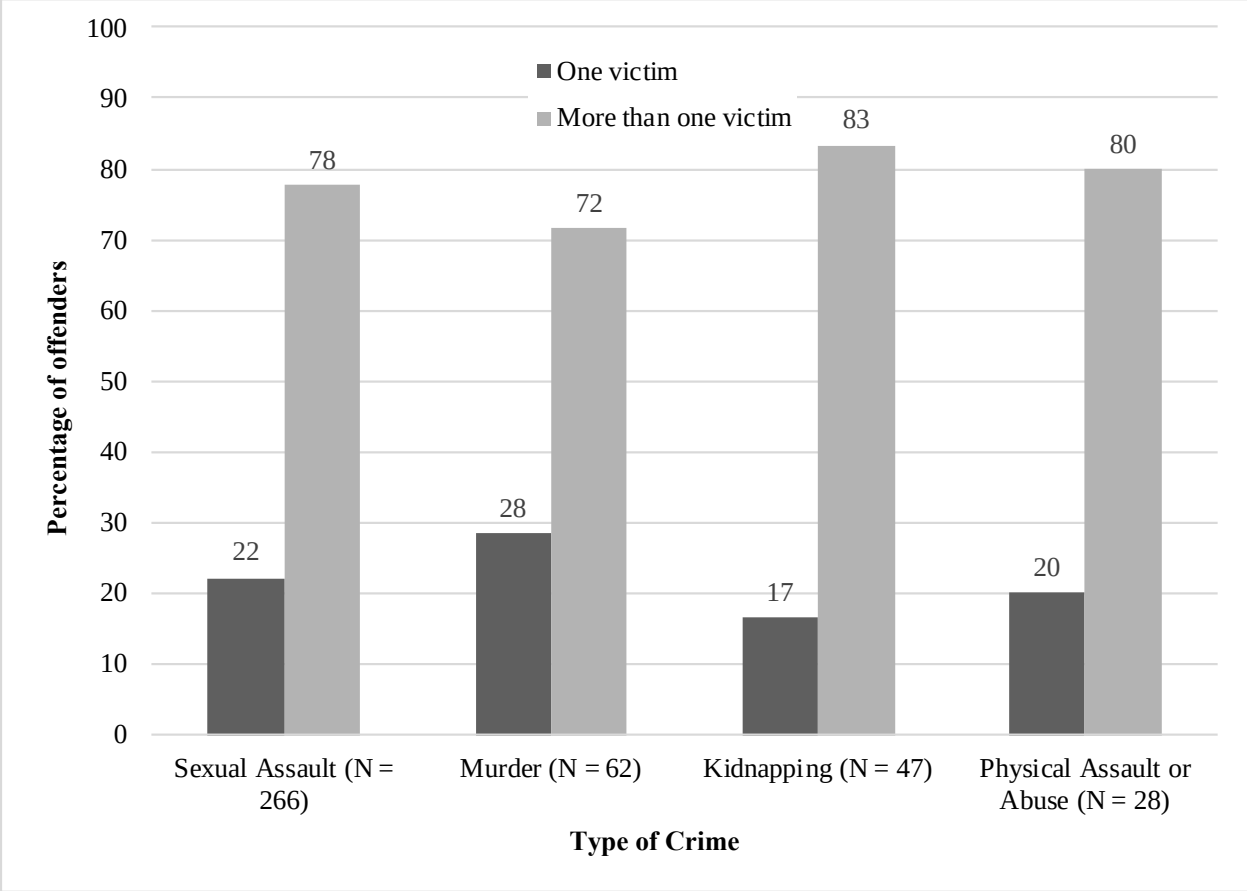


Figure 3: Single v. Multiple Victims within Crime Category, *Los Angeles Times* Reports on Sexual Predators, 1990-2015

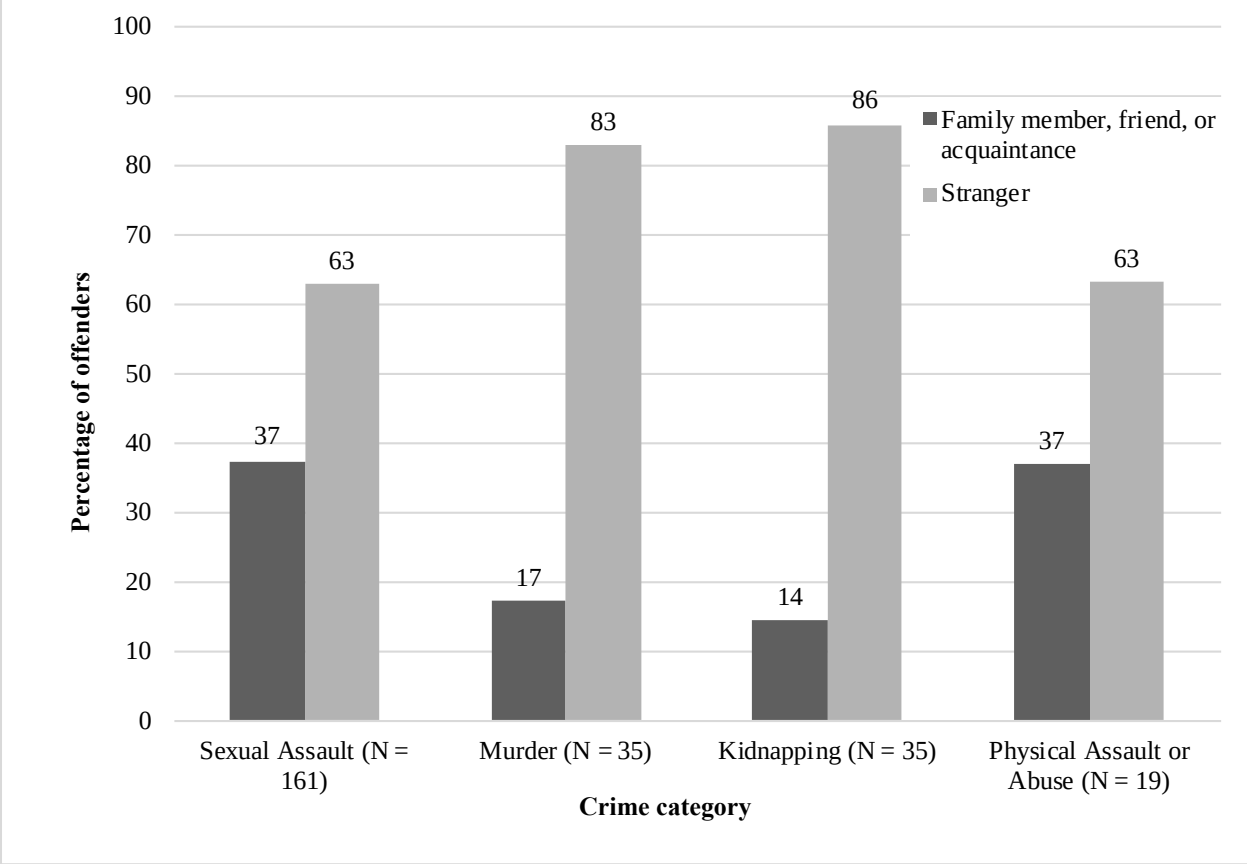


While previous research suggests that predator discourse may be racialized (in that it might focus on black offenders), 67% of articles discuss white offenders. This closely mirrors BJS data from 1996-2007 on the perceived race of offenders, both in terms of cumulative crimes of violence and in terms of rape/sexual assault specifically. On average, in both these categories, white offenders make up between 60 and 65 percent of total offenders reported. Black offenders make up about 20-25%, while other and unknown make up the rest (Statistics 1997-2006). Victim race was rarely identified in the sample data.

Within the total number of articles that identify the relationship between offender and victim, 60% discuss offenses by strangers or those unknown to victims, while 40% identify

family members, friends, or acquaintances as offenders—a distortion of reality. National statistics on victimization show that offenders known to victims on average actually commit about 67% of murders (Investigation 2002), and committed, and between 70-80% percent of sexual assaults each year between 1993 and 2016 (Statistics 1993-2016) indicating a potentially exaggerated focus on attacks by strangers relative to their actual occurrence. Figure 4 shows the percentage breakdown of victim-offender relationship within each crime category. When broken down by crime, the percentage of articles featuring stranger offenders increases even more, to 86 and 82 percent, respectively, within kidnapping and murder stories, and to 63% within stories of sexual and physical abuse.

Figure 4: Relationship of Offender to Victim within Crime Category, *Los Angeles Times* Reports on Sexual Predators, 1990-2015



Further analysis of article text demonstrates that graphic verbal descriptions accompany media emphasis on violent crime. In describing the murder of Anthony Michael Martinez, a child victim, several articles highlight his "naked" or "partially clad" body, "the duct tape used to bind [his] mouth, legs and hands," and his "bound body, pulled naked from a sun-blasted desert ravine" (Reich and Simon 1997, Becerra 2002, Pugmire and Verhovek 2005, Panzar and Serna 2015). Another story lists the names and details of crimes committed by sexual predators in Minnesota:

> Richard Enebak committed at least 37 sexual assaults between 1955 and 1969, many on young girls. In one rape, a 16-year-old girl suffered internal injuries, severe cuts and broken vertebrae that left her paralyzed...Charles Stone, a pedophile, admitted molesting as many as 200 young girls…Donald Martenies savagely raped a 7-year-old girl, then sewed up her wounds without anesthesia (Kuebelbeck 1993).

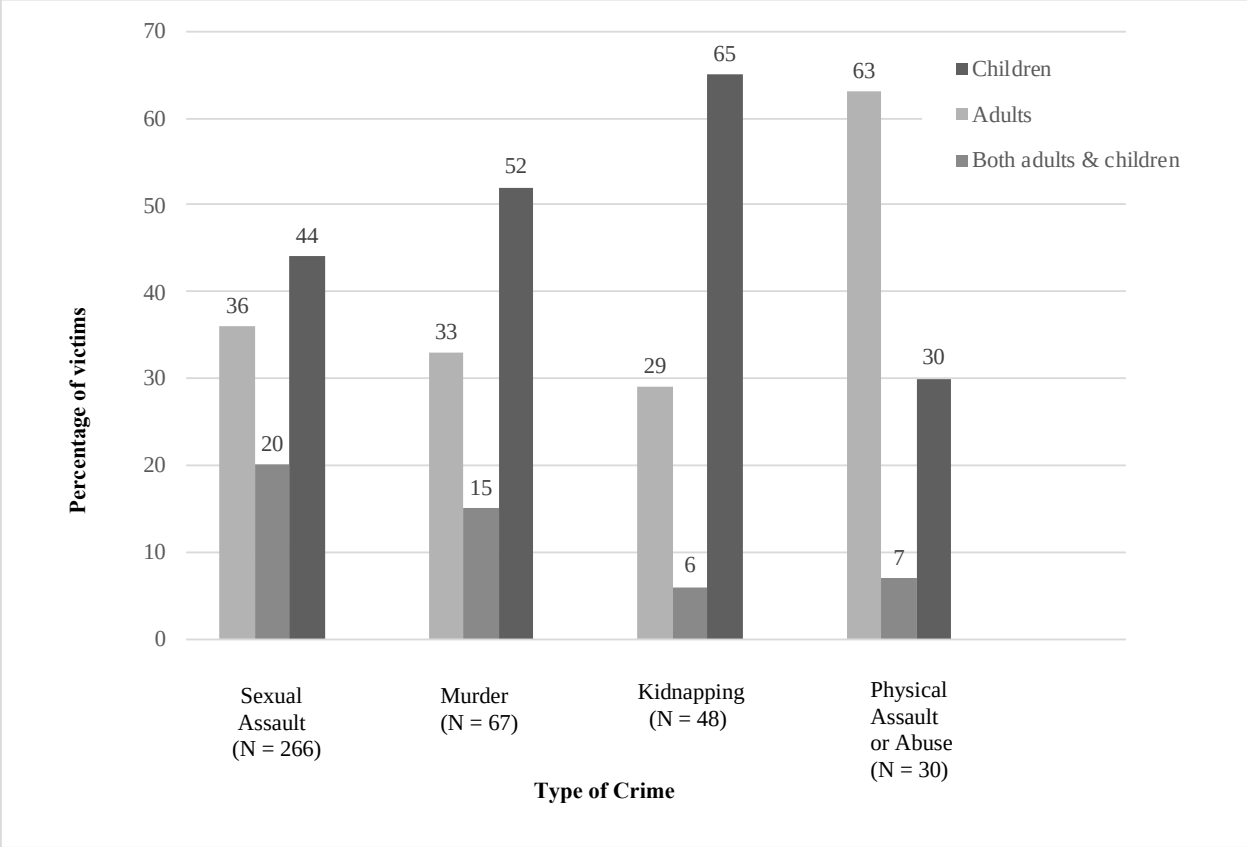
Yet another article describes the "bloody form" of 12-year-old Robert Smith Thompson, who was raped, thrown out of a car, and run over (Becerra 2002). Graphic depictions of violence against children in particular appear regularly throughout the sample (Louise Roug and Haldane 2000, Chu 2012).

Thus, from the start, articles that mention sexual predators emphasize violent content and narratives. This is not necessarily surprising, but further analyses into how violent coverage intersects with age and gender of victims demonstrate important framing distinctions in these areas.

Emphasizing child victims: overall trends and sexualizing violence

Among coverage of violent crime, articles focus more frequently on child victims than on adult victims. Figure 5 shows that articles are more likely to cover child victims in comparison to adults within three out of four violent crime categories. Non-sexual physical assault/abuse is the only category for which the percentage of adult victims exceeds that of children. Articles discussing sexual assault, while still featuring more child than adult victims, also featured the highest percentage of adult victims out of any crime category and were most likely to mention both adult and child victims in the same article. Still, the National Crime Victimization Survey indicates that, between 1996-2007, US adults aged 20-34 faced consistently higher rates of violent victimization (including both sexual assault and threats of sexual assault) than did those aged 12-19, and children under age 14 made up only 4.8% of murder victims overall between 1980 and 2008 (Smith and Cooper 2013). In addition, while national crime data on children under age 12 is limited, official Bureau of Justice Statistics (BJS) indicate that only 34% of child sexual assault victims in the United States are under age 12 (Greenfeld 1997)—while representing 57% of the news sample (Table 1).

Figure 5: Victim Age Percentage within Crime Category, *Los Angeles Times* Reports on Sexual Predators, 1990-2015



In addition, media emphasize large age gaps between victims and offenders. Overall, the sample is relatively evenly divided between offenders above age 40 and those below 40, with a slightly greater emphasis on the former (Table 1). Aside from a few years (1998 and 2001), this focus on older offenders remains consistent throughout the study time period (Figure 6). National data on age of sex offenders suggests that the sample over-represents older offenders—offenders over the age of 30 made up only 40% of victim-reported incidences of rape, sexual assault, and verbal threats of rape and/or sexual assault in 2002 (Greenfeld 1997). When victim age is cross-referenced with offender age, articles are most likely to mention the youngest category of victims in conjunction with offenders above age 40—58% of articles about victims under age 12 mention offenders above age 40 (Figure 7).

Figure 6: News Reporting on Sexual Predators, *Los Angeles Times* 1990-2015, Offender Below Age 40 and Offenders Age 40 or Above (N = 183, number of articles that mention the age of offenders)

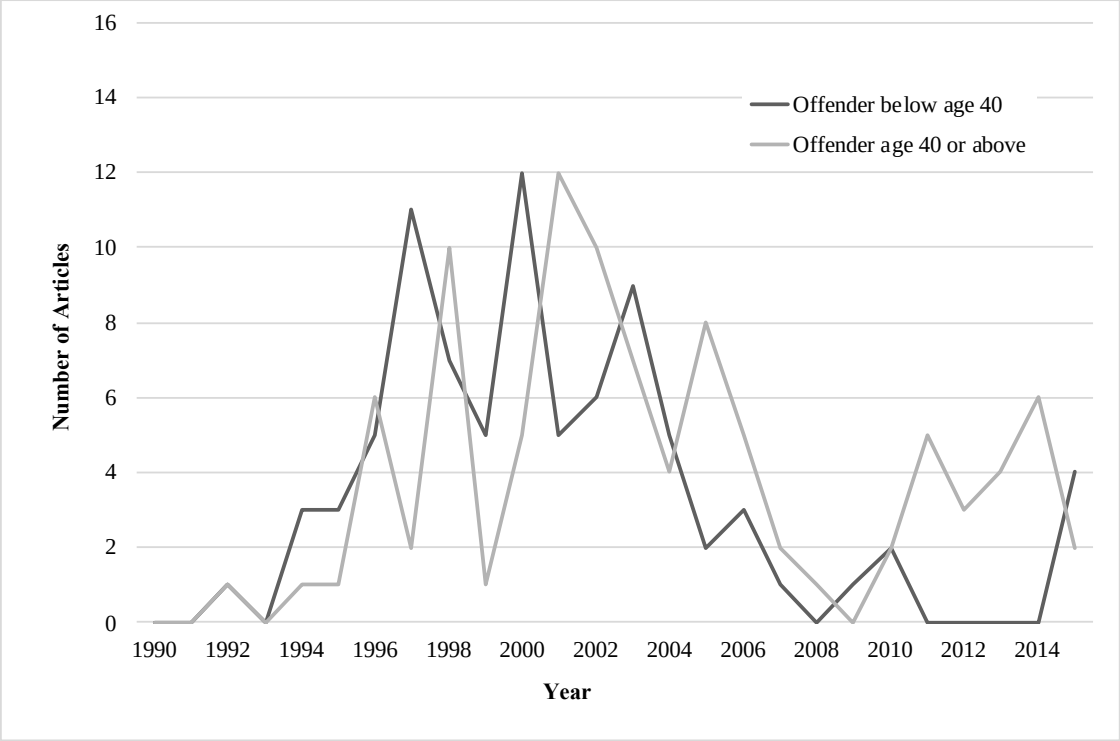
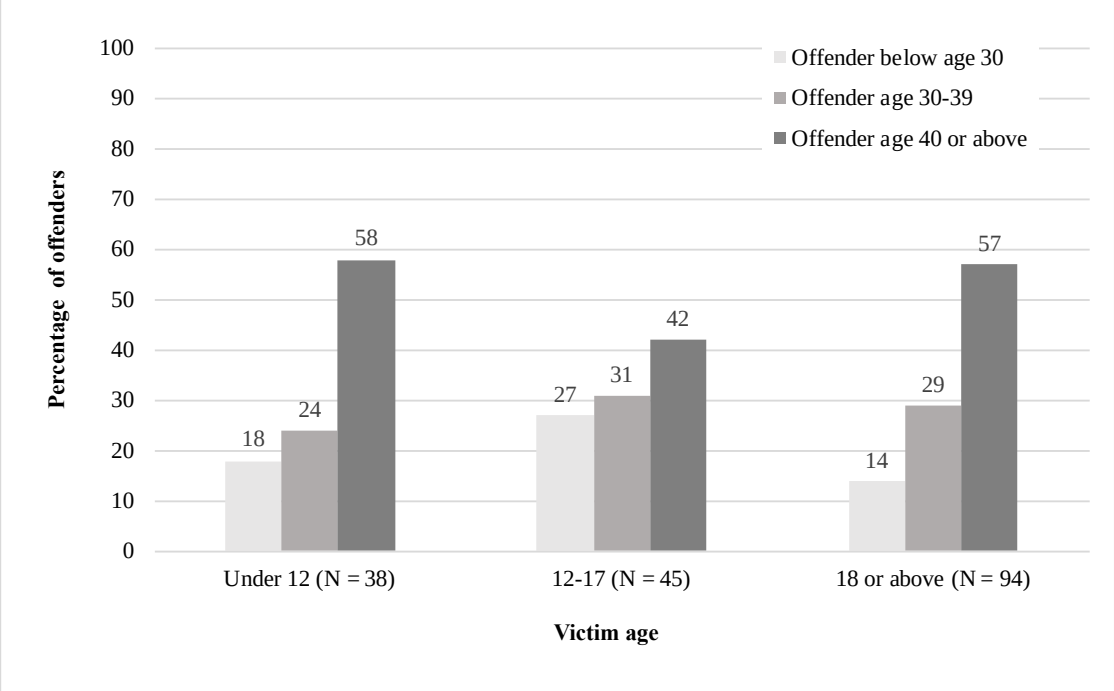


Figure 7: Percentage of Offender Age Category by Victim Age Category, *Los Angeles Times* Reports on Sexual Predators, 1990-2015



Results of an additional logit analysis also suggest a potential correlation between coverage of sex crimes, murder, and child victims. Articles that mentioned child murder were 1.77 times more likely to mention child sexual assault (P = 0.000). In contrast, articles that mentioned adult murder were not more likely to mention adult rape (in fact, they were less likely to mention it). Yet, in actual cases of child murder between 1980 and 1994, only three percent of child murders occurred with or preceded a sex offense (Jenkins 2004).

Several articles also assume or imply, without supporting evidence, that child molestation precedes murder or abuse. An article about Michael Anthony Martinez, a ten-year-old victim, points out that, even when authorities were unable to say whether he had been molested or not, they "believe[d] the crime was the work of a practiced sexual predator" (Reich and Simon 1997). In a story about a different child assault, a man attacks and beats a five-year old and runs away. Although the assaulter did not attempt to remove the victim's clothes or molest her, the article points out that sexual assault was the "likely intent" of the crime" (Garrison 2000).

Coverage of the notorious case of Polly Klaas, who was abducted from her bedroom during a slumber party and eventually strangled to death, frequently lumps Klaas together with Megan Kanka (who was raped and murdered), referring to both as "classic" victims of sexual predators (Bornemeier 1996, Geller 1996, Press 1996). However, there was no evidence in the Klaas case that she was sexually assaulted. One article quotes the prosecution's argument during the Klaas murder trial, stating that Klaas had to have been molested, despite a lack of physical evidence confirming this: "*Burglars* [my emphasis] don't go into houses and tie up females with cut-up women's undergarments" (Curtius 1996). The "undergarments" of which the prosecutor speaks were stockings—not necessarily indicative of sexual perversion, and certainly not evidence—in and of themselves—of sexual assault. Regardless, the jury found Allen guilty of

murder with special circumstances, including lewd acts against a child, and sentenced him to death.

Privileging child victims over adult women: collective versus individual responsibility

The emphasis on violence against children comes largely at the expense of adult women. The majority of adult victims in the sample are women (Table 1), which closely matches national data on victimization showing that from 1995 – 2010 women made up 91% of reported sexual assault victimizations (Barnett-Ryan, Langton et al. 2014). While the overall proportion of female to male victims remains relatively constant across crime categories in the sample data (when both gender and crime category are mentioned) (Figure 8), this relationship breaks down when age is introduced into the analysis. Figure 9, which examines the gender division of victims within the three sample age categories, shows that female victims are most likely to be above age 18, making up 81% of the victims in that age category, while coverage of child victims in the sample is more evenly divided by gender. Amongst victims under age 12, 49% were female and 40% male. This age category also had the highest percentage of articles that mentioned both male and female victims. When the child victim age categories are combined, females make up 54% of victims under age 18.

Figure 8: Victim Gender Percentage within Crime Category, *Los Angeles Times* Reports on Sexual Predators, 1990-2015

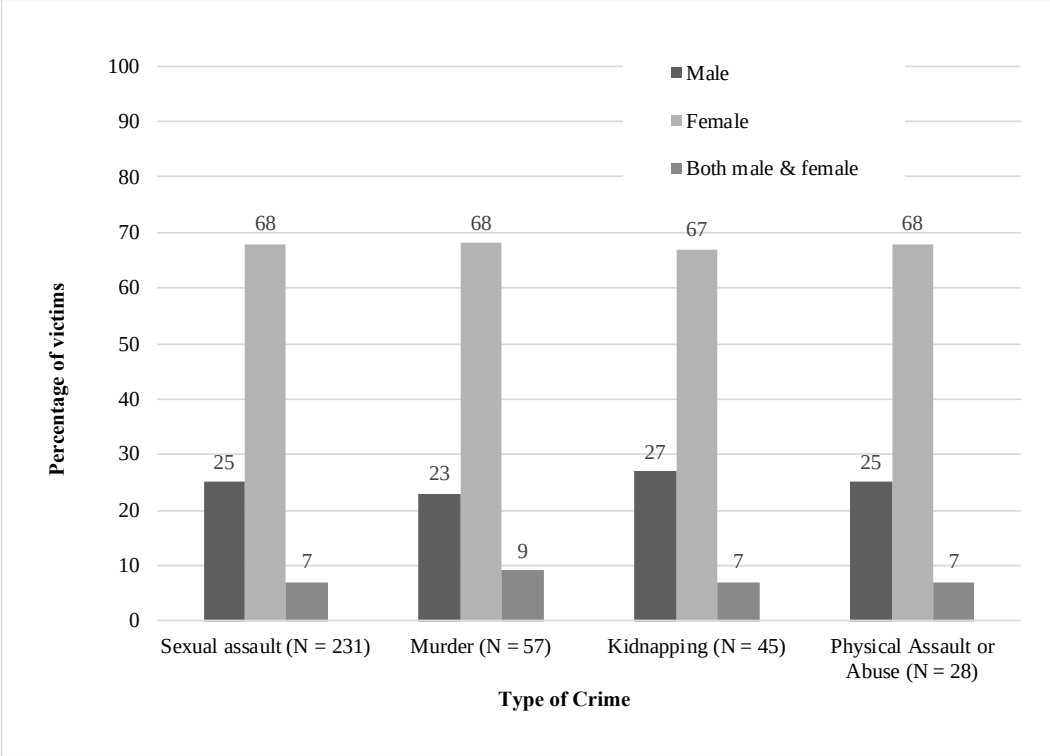
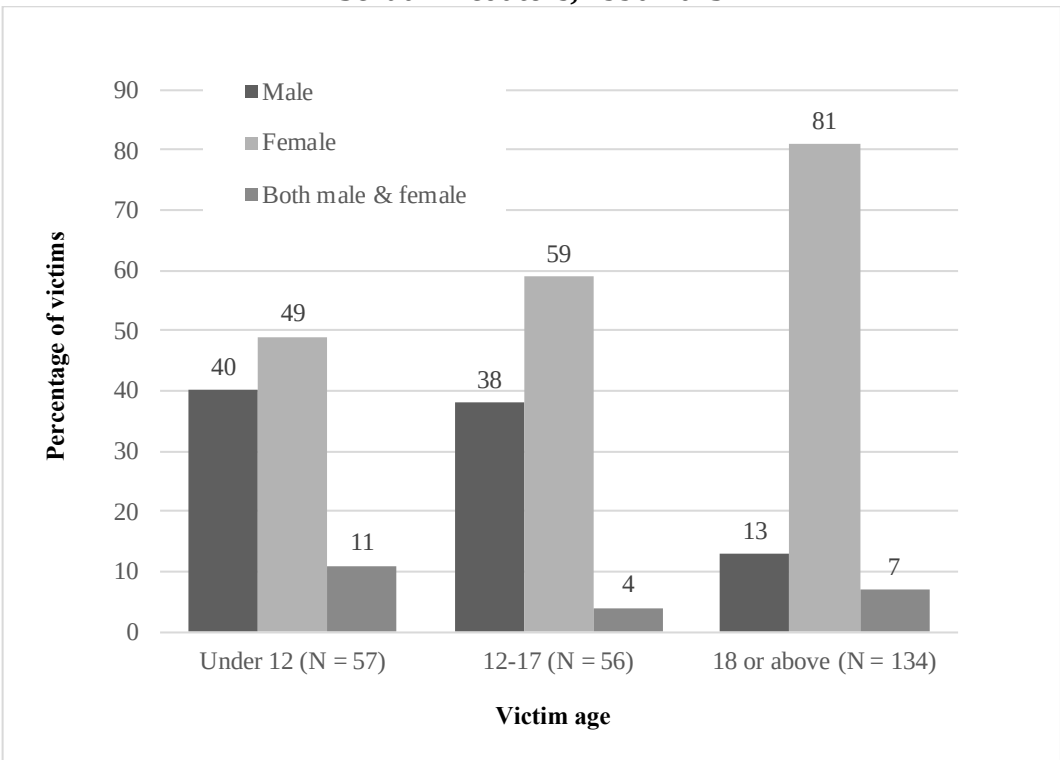


Figure 9: Victim Gender Percentage within Age Category, *Los Angeles Times* Reports on Sexual Predators, 1990-2015



Relative to national statistics, the sample demonstrates a greater focus on male victims in every age category. BJS data indicates that only 27% of sexual crime victims under age 12 are male (sample data indicated 40%), 18% of victims aged 12-17 are male (sample data indicated 38%), and 5% of victims 18 or older are male (sample data indicated 13%). Nationally, women make up 82% of victims under age 18—my news sample shows almost 30% fewer women victims than that (Snyder 2000).

These gendered differences become more salient when viewed in conjunction with textual narratives that present child victims as "universal," while delegitimizing the experiences of adult women. Articles present such victims as neither universally representative nor unequivocally innocent. They often detail victims' sexual history, casting doubt upon their innocence. For example, a story about Chester DeWayne Turner, who raped and murdered at least ten women, states that four of his victims, "were prostitutes. Relatives said they had been driven to prostitution by drug addiction" (Rocha 2014). This description of the victims is the only one available in the article and presents a stark contrast to the description of the six-year old murder victim Jeffrey Vargo, killed by Kenneth Rasmusen, as a "precocious, brown-eyed boy" who experienced a "violent death" (Panzar and Serna 2015). The only description of the adult rape victims is that they were likely sex workers—perhaps driven to that line of work by drug addiction, but defined by their occupation nevertheless. Another story about a rape case describes how the attorney for the defendant attempted to seek a mistrial because one of the victims lied about her past as an adult film star (Krikorian 1997). In contrast to universalizing narratives of child victims, these narratives set adult women aside as different.

Discussions of adult victims often arise from trial coverage, where articles detail court cases surrounding rapes and other sexual crimes. Media rhetoric in these instances reflects

courtroom deliberations and the legal strategy of defense attorneys, which is often to present the victim's behavior as sexually "aggressive." Several articles demonstrate, correspondingly, the way in which defense attorneys use the sexuality of women victims in order to undermine their credibility. A 2014 story about an alleged sexual assault by a male army General on a female subordinate officer states, "The defense portrayed the accuser as an ambitious and flirtatious officer who enjoyed sex with a dynamic general, only to react in rage…after realizing the general would not divorce his wife (Zucchino 2014). Another story about the trial of three men for the gang-rape of an Orange County woman points out that defense attorneys portrayed the 16-year-old victim as "…a would-be porn actress who consented to an orgy and feigned unconsciousness for dramatic effect" (Luna 2005). In 1992, when Mike Tyson was accused of raping an 18-year-old woman, his defense team described his accuser as "a spurned woman [with a lust for money] who sought Tyson's wealth but wound up with a one-night stand" (Gustkey 1992). These examples demonstrate the intersection of the law and media—article coverage reflects the content of legal cases, but, in the process, it repeats narratives that link the credibility of adult and even older teenage victims to their sexuality.

While the sample rarely discusses adult, male victims, a notable exception is extensive coverage of four State Prison guards who facilitated the rape of a male inmate by another male inmate as "punishment" for kicking a female guard. Like in the stories about adult women victims, the defense attorney for the guards attacks the victim's credibility, calling him a liar: "The only gainful employment [the alleged victim] ever had was as a drug dealer. He is a liar and a violent predator…Are you going to convict these men on [his word]?" (Arax 1999). Subsequent descriptions present the victim in more feminine ways, calling him "small," "slender," and "frail" (Arax and Gladstone 1998). Another story about several men who were

drugged, along with their girlfriends, by a date rapist, describes the men as being "rendered incapable of helping [their girlfriends] fend off attacks" (Krikorian 1997). Such representations emphasize the ways in which men victims (particularly of men offenders) fail to live up "classic" ideals of masculinity.

In contrast adult male victims and teenage and adult women, who appear to bear responsibility for their victimization, protecting very young children from victimization is presented as a collective responsibility—"Holding aloft her son's red high-top sneakers, Helen Harlow said: 'He could be anybody's child. He could be anybody's grandchild'" (Seigel 1990). As Bill Clinton signed Megan's Law, he stated: "The law named for one child is now for every child. [This law will] tell a community when a dangerous sexual predator enters its midst. There is no greater right than the right to raise children in peace and safety" (Bornemeier 1996). Articles also emphasize the vulnerability of very young children: "The perils to children are many, not the least of which are adults who prey upon their innocence and, in ways we can only imagine, damage them forever in the blush of infancy, like stomping a flower before it blooms" (Martinez 2004).

Correspondingly, articles use young child victims as a rhetorical tool to emphasize the monstrosity of sexual offenses. One article quotes a defense attorney's closing arguments as to why his client, who kidnapped and murdered an adult woman, should not be deemed a sexual predator, by drawing distinctions between notorious murderers, several of whom killed children, and his client:

> 'We're not talking about good versus bad acts. We're talking about the worst of the bad acts: Ted Bundy: serial killer [and famed necrophiliac] from the Northwest. Richard Ramirez: The Night Stalker [who raped and murdered at least two children under the age

> of ten, in addition to many adults]. Theodore Frank: The child sexual predator who killed [two-year-old] Amy Sue Sietz in this county.' Pointing to [his client], sitting calmly at the defense table with his chin on his left hand, [the lawyer] proclaimed: 'This young man is not in their class' (Bray 1995).

The defense attorney here contrasts his client's acts, which are "bad," with acts he considers worthy of the death penalty, focusing heavily on offenders who raped and murdered young children. A letter to the Editor of the *LA Times* on May 5, 2010 states, "We should treat sexual predators no different than murderers. Sexual predators should be put away for life. Period…Wake up America, and let's protect our children" (Editor 2010). This comment not only argues that sexual predation is on par with murder, but applies this term to child victims exclusively, appealing to the public for their protection.

Protecting child victims: justifying violence and dehumanizing offenders

Such appeals feed into discourse that justifies physical violence against sexual predators in the name of protecting children. When asked to comment on the ethics of child sex offenders opting for chemical castration in exchange for release from indefinite confinement, state Senator Brad Owen says: "Voluntary mutilation is too good for sex offenders. It should be mandatory for these creeps" (Marosi 2001). Another Letter to the Editor states, "Molesting and raping children leaves scars for life; why shouldn't the perpetrator also have scars that remain for life?" (Editor 1997). A local woman speaking in an article about a sexual predator who opted to be castrated in exchange for early release from prison states, "So what? Even if [the operation] does cleanse him of deviant thoughts, he still has to be punished for his crimes…He still hasn't paid his debt to society for what he did to children. That's the worst crime you could ever do" (Marosi 2001).

Thus, child victims often define the distinction between "bad" crimes and "the worst" crimes, the latter which justify extreme punishment.

In addition to legally sanctioned punishments, several articles also mention the physical assault of sexual predators by everyday citizens—vigilante "justice." One discusses the neighborhood apprehension of a man who exposed himself outside of a Roman Catholic high school—two men caught him and held him while the schoolgirls kicked and punched him, ultimately sending him to the hospital (Reuters 2003). Another piece details the trial of Washington state man who, enraged by the story of another sex offender in Idaho, found and murdered two sex offenders in his hometown using the state's sex offender registry (Tizon 2005). Rather than present these incidences as problematic, the first article almost gleefully discusses the "punishment" of the flasher, pointing out how the schoolgirls "took their revenge" (Reuters 2003), while the second uses the majority of article to discuss the crimes of the sex offender in Idaho that so outraged (and motivated) the double murderer (Tizon 2005).

News articles also use child victims to demonstrate how "sick" offenders are—not to discuss treatment, but, rather, to illustrate that offenders do not *deserve* treatment, or are lucky to receive it, however punitive in nature it may be. One article asks a community advocate her thoughts about the ethics of civil confinement, and she responds:

> I'm always amazed about [questions concerning] the health and fairness for the criminal…My response is, why don't you go ask the children, the victims of these monsters what their lives will be like?...To keep these monsters in a hospital is pretty compassionate to me" (Bond 1996).

A different article chastises the "misguided" efforts of providing treatment to sexual predators: "How much longer will we tolerate misguided judges who refuse to keep sexual predators locked

up, instead ordering probation or counseling based on the naive belief that there is a 'cure' for what therapists euphemistically call 'inappropriate sexual urges?'" (Geller 1996). A letter to the editor on August 22, 2002 (Editor 2002) points out that sexual predators are not "normal" people, but "monsters"—and should thus be locked "in cages forever" (correspondingly, in quantitative analysis, articles that mentioned child sexual assault were 1.3 times more likely to also mention wanting harsher punishment for sex offenders (P=.000)).

That many sexual predators were themselves victims of childhood sexual abuse at some point in time does not appear to make them worthy of sympathy—articles present the categories of victim and offender as mutually exclusive. One article discusses the sentencing to death of Jesse Timmendequas for the rape and murder of his neighbor, seven-year-old Megan Kanka (the namesake of "Megan's Law," which publicized and expanded sex offender registries across the United States). Despite trial testimony indicating that the defendant was both a sexual assault victim of his father and physical assault victim of this mother ("Carol Krych, a social worker called by the defense, told the jury that Timmendequas' mother beat him and once broke his arm with a wooden stick that family members called 'the equalizer'…Timmendequas' brother, Paul, said he remembered the defendant screaming when he was locked up with his father…(Goldman 1997), the jury sentenced Timmendequas to death, finding no mitigating circumstances for his crime.

DISCUSSION AND CONCLUSION

These results indicate that media coverage of sexual predators focuses most frequently on sexual assaults committed by repeat offenders and containing multiple victims, and kidnappings and murders committed by strangers. Coverage also overemphasizes crimes against children

under age 12, both relative to crimes against adults in the sample and relative to the incidence of crimes against children reported statistically. Articles frame the protection of children as a type of "collective" responsibility, using narratives of protection to justify violence against sexual predators. Narratives within these articles are graphically violent and often sexual, discussing male children almost 50 percent of the time. In contrast, the media discuss adult women less, and—when they do—frame these victims, even victims of serial rape, as responsible for their victimization. Coverage of offenders falls into overlapping predator tropes, both of violent criminals and child perverts.

Violence, child victims, and sex

While it may initially appear unsurprising that media coverage of sexual predators focuses on sexual assault, results demonstrate that this coverage also focuses heavily on murder and kidnapping, which, statistically speaking, rarely overlap with sexual assault (Jenkins 2004). Coverage of these violent crimes also overlaps with offender characteristics such as repeat offending, being unknown to victims, and having multiple victims, serving to intensify representations of "extraordinary" violence in this instance (Naylor 2001). In contrast to past research, stranger offenders are most likely to be found in kidnapping and murder stories—not stories about sexual assault (Wilson and Silverman 2002). These results indicate a general conflation of *violence* with *sexual violence* in the case of sexual predators, in effect expanding the range of crimes that constitutes sexually predatory behavior (Levine 2006).

In addition, articles about sexual predators, in both covering various types of violence against younger children and by narrating stories of child victims in particular ways, produce aged understandings of what constitutes sexual predator victims. While child and adult victims

receive equal amounts of total coverage during the entire study period, in years where articles focus more on child victims, they focus less on adult victims, and vice versa. This indicates that media choose *between* adult and child victims when determining which vulnerable victims to present, rather than, for example, focusing on stories of both adult and child victims during any particular year (Lynch 2002). This finding builds on previous work theorizing the construction of "ideal" victimhood (Christie 1986), demonstrating how child victims fit into this framework. When articles do focus on younger victims, they tend to combine various components of violent crime (murder with multiple victims, murder and rape, kidnapping by strangers, etc.) indicating that reporting of crimes with "notable circumstances" extends beyond adult rape victims (Meyers 1996) and reinforcing tropes that violence against children happens outside of families, rather than within them (Kitzinger 2004).

The association found between child murder and child sexual assault in *LA Times* coverage, combined with associated narratives of graphic violence, further suggest that media sexualize both crimes against children and child victims. Graphically describing violence against children while speculating about its sexual intent eroticizes attraction to children (while condemning it). Child murders in this context inevitably become sex crimes, as the case of Polly Klaas demonstrates. Levine (2006) points out that this same conflation occurred in the abduction and murder of child victim Adam Walsh (who was not mentioned in the sample). After his son's abduction, Walsh's father played an integral role in pushing forward federal sex offender laws, even though there was neither "suspicion nor evidence of sex" in Walsh's case (24). This is significant, because "When we speak of the unspeakable, we keep the speaking going" (Kincaid 1998). Media coverage of sexual predators, by reporting in this manner, produces its very own narratives of violence and child sexualization. As the Walsh case demonstrates, these narratives

have far-reaching impacts—some of them legislative.

Gender and hierarchies of victimhood

Media coverage in this instance is also gendered. While the vast majority of adult victims in the sample are women, almost 50% of victims under age 12 in the sample are boys. This finding, in conjunction with qualitative evidence of how the media emphasize the "universality" of child victims, initially suggests that gender plays less of a role in coverage of child victims than it does in that of adults, supporting notions of the "asexual" child victim (Kincaid 1998). However, when viewed in conjunction with graphic narrative descriptions of violence against children, many of whom are boys, this finding also potentially indicates that media believe this type of assault has more "shock value" than crimes against younger girls. Given that victims younger than age 12 are almost always mentioned in conjunction with offenders above age 40 in the sample, this finding also supports notions that pedophiles are most likely to be men who offend against boys, which is not statistically the case (Kitzinger 2004), and that the term sexual predator is, in many ways, synonymous with the term pedophile.

Coverage of adult victims adds an additional gendered component to the results by underrepresenting and effeminizing men who are victims of men (Snyder 2000), and "de-universalizing" adult women victims, presenting them as neither broadly appealing nor unequivocally innocent. This finding aligns with understandings that "true" victims of sex crimes must be non-sexual, something of which only children are capable (Krinsky 2016), and suggests that perhaps children represent the "purest" form of blameless victim (Dunn 2008). Given the severity of crimes covered in the sample (murder and serial rape, for example), framing of adult women as unsympathetic in this case remains somewhat surprising, and indicates that the

threshold for being a vulnerable victim has limitations for this group that it does not appear to have for children (Quinn, Forsyth et al. 2004). Thus, adult females are likely to remain "impure" and therefore blamable victims to a much higher degree (Dunn 2008). Masculinity adds an additional layer to constructions of victim legitimacy. To the extent that adult men victims fail to live up to masculine, heterosexual ideals, their victim status is devalued similarly to that of adult women.

Yet, it is notable and unmentioned in previous research that the narratives from which discussions of adult victims arise in the sample are, most frequently, legal ones. In recounting the trials of rapists, articles frequently detail defense attorney strategies that sexualize adult victims to undermine their credibility. In so doing, they introduce victim sexual history as a factor that impacts victim innocence, which simply never occurs in the case of child victims. While past research notes that media reproduction of political and legal images can define criminal subcultures (Ferrell and Websdale 1999) this result suggests that it does so for victims, as well.

Future research should examine the extent to which recent events are leading to shifts in victim narratives. The surge in use of the term "sexual predator" that arose with the advent of the #MeToo movement, combined with its emphasis on the legitimacy of the stories of adult women victims, could lead to a decrease in this type of "slut shaming." Catharine MacKinnon notes that the #MeToo movement has succeeded where the law previously failed in eroding the "disbelief and trivializing dehumanization" of sexual harassment victims (MacKinnon 2018). Recent work by Saguy (2018) suggests that French cultural attitudes about sexual consent and coercion shifted in response to 2011 news media reporting about the sexual assault charges brought against then-Presidential candidate Dominique Strauss Kahn. Changing news media and cultural discussions

about what constitutes "legitimate" victimization and victimhood may thus result in shifting constructions of sexually predatory behavior.

Violence, victims, and conceptualizing the sexual predator

These changing news media discussions may also result in shifting constructions of sexual predator offenders. *LA Times* framing of sexual predators presents them as a combination of various "predator" interpretations—"predatory perverts" in their focus on child victims (Lancaster 2011), yet highly violent and dangerous, in line with previous (and more racialized) understandings of "super predators" (Moriearty 2009). Narratively, it is this combination of vulnerable victims with perceived acts of extreme sexual violence that justifies violent treatment of sexual predators at both the popular and state level. Within this dialogue, sexual predators remain mostly white men. Yet, using "innocent" victims as the justification for violence against sexually "deviant" individuals parallels the discourse used to justify the lynching of thousands of black men in the Reconstruction Era South (and up until today). Sexual predator discourse shares other violent elements of that era, most notably an emphasis on castration as a way to "treat" or neutralize the sexual deviance of such individuals (Sexually Violent Predators in California with victims under the age of 13 face mandatory chemical castration (via anti androgen hormonal therapy) or voluntary surgical castration (Scott and Holmberg, 2003)).

Within such narratives and policies, protecting children thus becomes a shared practice that "help[s] the white middle class feel a sense of community, exert a sense of sexual hygiene and moral discipline…and stake its claim to being the universal class, the one whose sense of danger, morality, and justice will serve as norm for all society" (Lancaster 2011). As such, children may represent the ultimate symbolic victims, a universally accessible, ideal, and

blameless victim frame (Christie 1986, Best 1997). But will narratives about protecting women have the same impact? Inasmuch as adult victims can be impugned, it seems doubtful that they will ever have the same universal appeal.

Implications and moving forward

These results have important substantive and methodological implications. California's Sexually Violent Predator (SVP) law reflects the most extreme regulation in a series of sex offender laws implemented in the state over the past 25 years, yet the California law and others like it continue to withstand legal and political challenges (Friedland 1999, Brakel and Cavanaugh Jr 2000, Cantone 2008). As others have pointed out, "The virulent politics [of SVP laws] make even the study or discussion of alternative approaches to sexual violence seen to be a third-rail issues—instant political death for anyone proposing serious consideration of alternative approaches" (Janus 2006).

The 2006 amplification of California's SVP law (which reduced the number of qualifying sex offenses from two to one) via voter-enacted Proposition 83 suggests that public opinion can play far more than a peripheral role in sex offender statutes. The way in which media frame various aspects of sexual crime thus represents far more than a "distraction" from cultural and political issues (Dowler, Fleming et al. 2006)—it constitutes a potentially vital component of how the public construct understandings and make meaning of the sexually predatory. These understandings likely impact victims—diminishing the "right" to victimhood for some, while elevating the victim status of others—as well as offenders, who wind up subject to both community and state-sanctioned violence. While this study cannot definitively say whether or not that is the case, this area warrants further research and analysis.

Methodologically, this study shows that the partial nature of much previous work on media and crime can conceal valuable information about victims and offenders. The combination of qualitative and quantitative methods in this analysis demonstrates that looking at media content alone (without examining rhetoric) and failing to disaggregate categories such as "child victim" and "violent crime," cannot give a full picture of how news media frame sexual predation. It is thus important for future studies to look both between and within categories when analyzing crime—we cannot understand offenders without victims, nor can we generalize either of those categories without looking at their nuance. This is particularly important in the case of sex crimes, where victim status has historically been privileged amongst some groups, while denied to others (Collins 2004). In addition, the use of national statistics in this analysis, while not a perfect comparative measure, provides vital sociological perspective with which to view the results. When discussing media coverage as a cultural arena, such measures indicate how large the differences between actual statistics and such coverage actually are.

It is important to note that these results apply specifically to sexual predator discourse and the news media content analyzed in this study. "Contemporary" media is a broad and evolving category. In order to study such a long time period, print news provided the most constant source of media coverage in this case. However, scholars point out the ways in which the diffusion of media across communication technologies, particularly the advent of social media, has only further complicated understandings of media influence on "society" (Fischel 2016). Social media also provides an outlet for the perspectives of sexual offenders that did not previously exist, usually in the form of Facebook and online support groups. Future studies should thus look at how electronic and social media both socially organize understandings of deviance and also may provide space for oppositional narratives that major media outlets do not

take up.

A number of themes I initially coded for in the data arose little or not at all in content analysis, including several areas where I theorized that discussions of victims might appear. Less than 4% of articles mentioned the Internet and less than 1% mentioned chatrooms, even though Wolak et al. (2007) find that 13% of youth Internet users received unwanted sexual solicitations in 2005. While about 10% of articles mentioned schools, less than 2% of articles discussed abuse by teachers or peer abuse/assault, including college sexual assault, yet Kilpatrick et al. (2007) find that in 2006 alone, 5.2% of college women were raped. Finally, only about 4% of articles discussed abuse of children by coaches and clergy, despite several somewhat infamous abuse stories in these areas occurring within the study time period (for example, revelations of systematic sexual abuse of children by Catholic priests, as well as the Pennsylvania State University abuse scandal where former assistant football coach Jerry Sandusky was found to have molested and raped at least ten young boys over the course of his career). It is possible that these spaces and scenarios are for some reason seen as less "predatory" (sexual assault on campus usually involves adult victims who are close in age), but additional research should examine why news media discussion of sexual predators may not touch upon these issues.

Overall, this study demonstrates that sexual predator discourse, while currently "having a moment," is not a new phenomenon. News media has set a violent, aged, and gendered agenda for this term, and creates images of both victims and sexual predators in the process. These images can feed back into law and political discourse, with potentially far-reaching effects—from the potential for radical feminist change, to the ever more extreme regulation of sex and sexuality. As changing cultural events continue to impact dialogues surrounding sexual crime, it is these same images that will both constitute and reflect the "sexual predators" of our time.

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CHAPTER 4

From Treatment to Punishment: Law, Medicine, and Competing Logics in California's Civil Commitment Program

Abstract:

Existing literature argues that Sexually Violent Predator (SVP) laws, which confine and treat various "mentally disordered" sex offenders for indefinite periods of time, constitute punishment disguised as medical treatment (Douard 2008, Janus 2006). Yet we know little about how SVP treatment and evaluation processes function, or how medical-legal interactions structure treatment environments in punitive ways. Using observation of one three-week-long Sexually Violent Predator trial; in-depth, semi-structured interviews with 12 medical and legal SVP experts; 70 hours of participant observation over 24 months of at a statewide sex offender management coalition and sex offender advocacy group; and analysis of primary documents relating to California's SVP Program, I examine SVP treatment processes at interpersonal and institutional levels. I find that three factors transform treatment into punishment: 1) institutional inefficiencies, such as staffing shortages and treatment inconsistencies, that make accessing and successfully completing treatment almost impossible, 2) stigma created by the sexual predator label that impacts treatment processes, and 3) the subordination of medical and clinical priorities to legal and punitive priorities. These results demonstrate how medical-legal interactions can shape treatment environments in punitive ways, and how the narrative of treatment increasingly functions to exclude and punish undesirable populations.

INTRODUCTION

Sexually Violent Predator (SVP) laws emerged in the 1990's amongst a profusion of new sex offender laws and regulations in the United States, including expanding public registration and notification, extended sentencing, and longer probation sentences for offenders convicted of sexual crimes (Meiners 2009, Pickett, Mancini, and Mears 2013). SVP laws deem certain types of offenders "mentally disordered;" possessing sexual pathologies that make them predisposed to continue offending (for example, pedophilia and sexual sadism). This mental diagnosis justifies their indefinite confinement in mental hospitals after they serve criminal sentences.

This body of laws, also referred to as "civil commitment" laws, rely on the provision of treatment for Constitutional legitimacy: SVPs are confined for the sake of public safety while they undergo treatment for their disorder(s) (Janus 2004). Treatment, however, is voluntary, because the state cannot mandate that offenders participate (Miller 2010). Yet, without successfully completing treatment, patients are rarely, if ever, eligible for release. Even when they do participate in treatment, "success" is rare: by 2006, less than 10% of SVPs nationally had been released (Gookin 2007).

Both medical and legal literature critique civil commitment laws, pointing out that, amongst other issues, they are a form of preventative detention, they violate double jeopardy and due process, and they do not meet the criteria for clear diagnosis of a mental illness (Brakel and Cavanaugh Jr 2000, Cantone 2008, Friedland 1999, Testa and West 2010). Additional work argues that such laws are cruel and dehumanizing, justifying indefinite confinement for a group of people considered "monstrous," unpalatable, and largely unsympathetic (Douard 2008). Others point out that the science of psychiatry legitimates and neutralizes their underlying

emotional, punitive, and political undercurrents of SVP proceedings and laws (Janus 2000, Douard and Schultz 2012).

A connecting thread amongst objections to SVP laws is that they constitute a form of extreme punishment disguised as treatment, setting the precedent for preventative detention of "undesirable" groups of individuals on a wide scale (Prentky et al. 2006). Yet the majority of literature in this area is theoretical, not empirical—it examines neither *how* treatment functions within this context, nor the institutional and social processes that might make treatment punitive. As ideologies of treatment become increasingly integrated into law and population management (Sweet 2018), information about these processes can add valuable information to how we understand this integration and its implications—particularly for marginalized groups.

In order to fill this gap in empirical research, I draw on multilevel analysis of California's SVP law to examine how medical and legal interactions transform the treatment of sexual predators into punishment. Using observation of one three-week-long Sexually Violent Predator trial; in-depth, semi-structured interviews with 12 medical and legal SVP experts; 70 hours of participant observation over 24 months of at a statewide sex offender management coalition and sex offender advocacy group; and analysis of primary documents relating to California's SVP Program, I examine these processes at interpersonal and institutional levels. I find that three factors transform treatment into punishment: 1) institutional inefficiencies, such as staffing shortages and treatment inconsistencies, that make accessing and successfully completing treatment almost impossible, 2) stigma created by the sexual predator label that impacts treatment processes, and 3) the subordination of medical and clinical priorities to legal and punitive priorities. These results demonstrate how medical-legal interactions can shape treatment

environments in punitive ways, and how the narrative of treatment increasingly functions to exclude and punish undesirable populations.

BACKGROUND

California's enacted the Sexually Violent Predator (SVP) Act in 1996. The law created, labeled, and classified a "Sexually Violent Predator" as "a person convicted of a sexually violent offense against one or more victims, and/[or] who has a diagnosed mental disorder that makes the person a danger to the health and safety of others, in that it is likely that he or she will engage in sexually violent predatory behavior" (D'Orazio et al. 2009). Courts assign SVP designations for repeat offenses the law statutorily defines as forceful, violent, or menacing (for example: rape or sodomy). Alternatively, the law automatically considers offenders who commit any sex crimes against victims under the age of 14 eligible for SVP designation.

A mental health diagnosis is integral to the law, which is civil, rather than criminal. In contrast to criminal laws, which are designed to punish various crimes, civil laws are designed to regulate behavior and prevent future harm, often imposing mandatory commitment for mental illness, developmental disability, or substance addiction. In this case, offenders first serve criminal penalties, and, shortly before release, those convicted of sexual offenses are evaluated to identify potential SVP qualification. Qualifying inmates undergo a series of evaluations by licensed psychiatrists or psychologists, and, if they are determined to meet the SVP criteria, are referred to the district attorney or county counsel of the county where the current controlling offense occurred.

At this point, inmates must go through civil commitment hearing that determines whether there are sufficient facts to designate them an SVP and confine them at Coalinga State Hospital

(CHS), a California facility built in 2005 specifically to house and treat SVPs. Individuals remain in custody at Coalinga while awaiting this hearing. During this time, they may engage in treatment if they wish (D'Orazio et al. 2009). Often, SVPs remain in the facility for years awaiting trial, either due to administrative backlog, legal advice, or a variety of other factors (May 2018). The SVP hearing can be a judge or a jury trial, and to be determined an SVP, either must decide beyond a reasonable doubt that the individual meets SVP criteria (jury decisions must be unanimous).

Those found to be SVPs are sent back to CHS, where it is suggested that they participate in treatment, and they can petition the court for release on a yearly basis. However, because SVPs are civilly, rather than criminally, committed, and because they have already served criminal sentences, California law gives patients the legal right to refuse treatment. The treatment program at Coalinga is called the "Phase Program." It consists of five phases, four inpatient and one outpatient, to be completed after release. Treatment involves group therapy sessions, sexual arousal modification treatment, polygraph testing, and the use of anti-androgen hormonal therapies and serotonin-enhancing medications (SSRIs) to reduce "deviant" arousal (D'Orazio et al. 2009).

LITERATURE

To understand the institutional and social processes that shape SVP treatment, I draw on three bodies of literature. These include legal and medical critiques of SVP law and treatment (Janus 2000, Janus and Prentky 2008, Miller 2010), work on stigma, labeling, and categorization (Douard 2008, Goffman 2009, Link and Phelan 2001), and literature on medicalization and the law (Conrad 2005, Foucault 1990).

Treatment or Punishment? Legal and Medical Critiques of SVP Treatment

A large body of legal and medical literature critique civil commitment laws. Legal work argues that the medical model underlying such laws sets a precedent for preventative detention, violates double jeopardy, and violates due process, because defendants serve criminal, and then civil, sentences (Brakel and Cavanaugh Jr 2000, Cantone 2008, Friedland 1999). Such arguments have thus far withstood legal challenges because civil commitment is by definition treatment, and not punishment (Janus 2000). Additional research disagrees with the mental health diagnoses assigned to sexual predators specifically, who often do not meet any clear criteria for a *Diagnostic and Statistical Manual of Mental Disorders* (DSM) diagnosis. After pedophilia, psychiatrists often use "paraphilia not otherwise specified" or "antisocial personality disorder" to justify civil commitment, both of which are broad categories that encompass a wide range of sexual disorders (Testa and West 2010). The American Psychiatric Association now formally opposes the use of sexual predator commitment laws because of such diagnostic concerns (Sreenivasan, Frances, and Weinberger 2010).

Prentky et al. (2008) argue that the continued existence of such laws, despite these legal and medical criticisms, demonstrates that they are a form of punishment "disguised" as treatment. Yet how the interactive and structural processes and components of treatment facilitate this transformation remains unclear (Miller 2010). One potential way this might occur is through disincentives for treatment participation within the civil commitment context. Miller discusses the "paradox" of SVP treatment: treatment "success" requires offenders to discuss past sexual transgressions and fantasies, but such admissions are not protected by confidentiality, and can subsequently be used in hearings to justify continued confinement. We do not yet know how legal and medical experts navigate this paradox.

Professional assessments of treatment performance also form key evidential components of commitment hearings, and may impact treatment (Janus and Prentky 2008). Because prosecutors rely on such assessments to demonstrate that SVPs do *not* meet the criteria for release, it is possible that defense attorneys may advise SVP clients to forgo treatment, assuming that treatment failure will negatively impact their cases more than treatment non-participation (Miller 2010). The use of the Static-99 actuarial test in SVP evaluation and treatment may also play a role in making treatment punitive. This test classifies sex offenders into various risk categories by measuring a number of unchanging variables that predict sexual and violent recidivism in adult male sex offenders, including prior sexual offenses, relationship history, and age (Hanson 2006). Yet, aside from age, an offender's score never changes, meaning that one major evaluative element in SVP treatment success is not actually impacted by treatment participation.

Additional work points out potential institutional issues with SVP treatment. One such issue is that the cost of inpatient civil commitment treatment (in contrast to outpatient treatment in community programs or inpatient treatment in correctional programs), is expensive, and diverts resources away from other mental health and sex offender management programs that could reach a wider scope of offenders (Janus 2000). Coalinga State Hospital has also been criticized for staff shortages and its 250 million dollar per year operating budget, because so few patients have successfully completed treatment and been released (Mays 2018). Yet no empirical work exists that examines how these staff shortages or other institutional efficiencies delay or shape treatment.

Stigma, Labeling, and Categorization as Potential Treatment Barriers

Another potential process that may impede treatment is the labeling and categorization that occurs when "sexually violent predator" becomes a legal and medical category. Goffman's (2009) classic theory of stigma points out how certain attributes of identity can result in negative stereotyping. Link and Phelan (2001) further state that labels link individuals to the "set of undesirable characteristics" that form those stereotypes—the very act of labeling creates difference and, subsequently, hierarchies. In the case of sexual predators and sex offenders more broadly, medical language often comes to take on symbolic meaning—"pervert" began as medical diagnosis, yet the term has a far broader meaning (Jenkins 2004). Risk assessment models, or actuarial tests that are used to categorize and measure dangerousness in offenders, are often presented as neutral or devoid of emotions; an objective way to make sex offender policy (Janus and Prentky 2008), yet Douard (2008) argues that assessments that medically label sex offenders also function as cultural narratives that frame them as monstrous, unable to control their impulses, and unworthy of sympathy. The medical diagnosis of sexual predator thus functions as an ideology that produces norms, exclusions, and hierarchies of worthiness (Kunzel 2017: 239).

While Douard (2008) discusses how the dehumanization associated with this label justifies the deprivation of sexual predators' rights, he does not examine how this labeling might function within a treatment or rehabilitative programming context. This is particularly important because research finds that agreement with stereotypes can promote strong reactions and discrimination against stigmatized groups that reduce the likelihood of helping behavior (Corrigan and Matthews 2003, Corrigan and Watson 2002), and because sex crimes tend to elicit heightened emotions such as fear and distress (Rogers and Ferguson 2011). The stigma of being

labeled a sex offender has a number of subsequent impacts: it can result in loss of relationships, employment, and housing, and physical and verbal assaults amongst those on the sex offender registry (Tewksbury 2005, 2012), and social exclusion and abuse for sex offenders within prisons (Ricciardelli and Moir 2013).

Yet, we know very little about how this stigma impacts treatment. One study by Jahnke and Hoyer (2013) finds that pedophiles can feel stereotyped and looked down upon by treatment providers, but this study looks only at outpatient sex offender treatment programs, and not at how stigma might function within an institutional treatment context. D'Orazio et. al (2009) commenting on SVP treatment specifically, point out that:

> [In order for treatment to be effective] the civil commitment context must be non-punitive, respectful, and supportive of change. The extremely negative stigma and shaming that accompanies the label, "Sexually Violent Predator" provokes negative responses that [may prevent this].

Such labeling may also extend to courtroom procedures that evaluate treatment "success." Walsh (1990) finds that in felony sexual assault cases, the labeling of sex offenders with a sexual pathology makes it over twice as likely for those offenders to be incarcerated compared to those who were not given a diagnostic label. In fact, in jury trials, a diagnosis by a psychiatrist of "sexual deviancy" can have a greater impact on trial outcomes than actual trial-related factors (Konecni, Mulcahy, and Ebbesen 1980). Work specifically on Sexually Violent Predators finds jurors more than twice as likely to deny them parole compared to convicted felons, given identical case conditions, and that this label also makes jurors more likely to convict offenders (Lieberman and Krauss 2009, Scurich and Monahan 2016). However, both of these studies used mock SVP juries, not actual jurors or trial evidence.

Similar to juries, judges also display bias. Bumby and Maddox (1999) point out that, in sexual offense cases, it is more difficult for judges to maintain neutrality and sideline emotions, particularly because they feel public scrutiny and pressure to mete out harsh punishments. False beliefs about sex offender recidivism and responsiveness may contribute to this bias. Lave (2011) refers to this as the "myth of inevitable recidivism"—despite empirical research demonstrating that recidivism rates for sex offenders are much lower compared to other crimes (Hanson and Morton-Bourgon 2009, Scurich and Krauss 2014), the idea that sex offenders are likely to recidivate remains widespread and salient (Levenson, D'Amora, and Hern 2007). This belief goes hand in hand with the notion that treatment is ineffective (La Fond 2005). The stigma and label associated with SVP status, then, may impact treatment and evaluation within both the medical and legal context.

Science, Medicine, and Law in SVP Cases

Medical sociologists theorize that medical knowledge, authority, and technologies are important sites of social control (Parsons 1951). Medicine began to define and code the "sexually peculiar" in the 20th century, and legal text increasingly integrated these medicalized understandings of sexual deviance (Conrad and Schneider 1980, 1992, Eskridge 2008, Foucault 1990). The law also began to mandate medical treatments for sexual deviance. These methods included therapy, orchiectomy (removal of the ovaries), castration, and hormone administration, amongst others (Ordover 2003, Rachman and Teasdale 1969, Valocchi 1999). As changing norms shifted both understandings of sexual deviance and its medical treatment over the twentieth century, accompanying legal responses and treatments shifted, as well.

Medical diagnosis remains integral to the legal regulation of sex, in particular civil commitment laws (Levine 2006). In the case of civil commitment, the law preceded medical diagnosis—legislatures created the SVP category and then turned to medicine to justify it (Leon 2011, Vogler 2018)). Courts subsequently began to use forensic science and expertise to formalize this category, leaving forensic experts with the responsibility of finding medical criteria that aligned with legal specifications (Janus and Prentky 2008). They began and continue to do so largely with risk-assessment tools—supposedly neutral actuarial assessments that classify offenders based on the imminent danger they pose to themselves and others (Haggerty and Ericson 2000, Garland 2001). Sweet (2015) points out that in contemporary discourses of medicalization, risks become "medicalized products" that experts both create and employ, distilling complex social factors into "rationalized calculations." As courts invoke science to justify their decisions, such calculations become reworked into legal logics (Fischel 2016, Moore and Valverde 2000, Vogler 2018). Douard and Schultz (2012) and Vogler (2018) argue that the cooperation of forensic psychiatry with law in this instance is thus responsible for both justifying punitive policy and permanently labeling SVPs as "incurable."

Despite these theoretical analyses, we know little about the processes and interactions through which this occurs. In particular, studies have yet to examine how legal and medical actors negotiate and interpret their roles and responsibilities in the SVP context. This is relevant because it can shed light on the mechanisms through which treatment becomes punitive (or functions effectively). Orr (2003) points out that the sociology of diagnosis can provide tools to examine the way that medical discourse defines social problems (Sweet 2018). I examine SVP diagnosis and treatment in order to better understand how medical and legal discourses impact the construction of this social problem.

DATA AND METHODS

This article draws on observation of one three-week-long Sexually Violent Predator trial; in-depth, semi-structured interviews with medical and legal SVP experts (N=12); and 70 hours of participant observation over 24 months at the California Coalition on Sexual Offending (CCOSO) and the Alliance for Constitutional Sex Offender Laws (ACSOL) meetings and online forums, including content analysis of meeting materials. I also analyzed primary documents relating to the California Department of Mental Health and Coalinga State Hospital, including a 2015 state audit of California's Sex Offender Commitment Program and a 2019 State Hospital Budget Report. This multilevel approach allowed me to explore the interaction of medicine and law, observing professional and practical discourses in official documents, expert settings, and via the narratives of those who employed them.

In order to evaluate how medical and legal discourses about SVPs intersected in a courtroom environment, I observed one full-length SVP trial in Orange County, CA from start to finish, including jury selection and interviews with the jury after they determined a verdict. The trial began on February 16, 2017 and ended on March 6, 2017, lasting approximately 40 hours. The purpose of the trial was to determine if Ronald Rogers, a convicted sex offender, should remain civilly committed at Coalinga State Hospital, where he had been committed for 21 years prior. The little research that exists on court proceedings, particularly SVP proceedings, tends to use trial transcripts, rather than participant observation (Vogler 2018). The unique and important experience of actual trial observation allowed me to view the testimony of expert medical witnesses, interactions between the defense attorney and the prosecutor, and jury reaction to expert testimony. While not a complete trial ethnography, these observations demonstrate the

way in which the trends identified in my other data arise and play out on an actual case-by-case basis, contributing valuable information to this analysis.

In order to examine how medical and legal actors negotiated the institutional and emotional issues surrounding SVP treatment, I also conducted 12 semi-structured expert interviews for my analysis. To recruit participants, I used respondent-driven sampling from my field sites, as well information from my own general research to identify prominent doctors, lawyers, and other professionals working on SVP-related issues. Respondents were given the choice of identifying themselves or remaining anonymous for interviews, which were 60-90 minutes long. I created pseudonyms for the experts who chose to remain anonymous. Figure 1 lists respondent names and pseudonyms, along with their occupations.

Figure 1: Expert Names* and Occupations

Name	Occupation
Christina Behle	Attorney
Janice Bellucci	Attorney
John Brown*	Judge
James Dabney	Judge
Cecelia Groman	Clinical Expert
Leesl Herman	Clinical Expert
Hy Malinek	Forensic Psychologist
Christopher Mann*	Forensic Psychologist
Chance Oberstein	Attorney
James Rogan	Judge
George Runner	Politician
Adam Yerke	Forensic Psychologist

*Pseudonym

Half of the interviews were conducted in person, and half were conducted via Skype or phone due to location and travel restrictions. Interviews included questions about the work each person did, how that work related to SVP treatment and/or legislation, experiences working in the area of SVPs, what challenges (personal and professional) each interviewee faced working in

this area, and questions about legal and medical definitions and practices. Either an undergraduate research assistant or I transcribed all interviews, and I created a manual coding schema to identify and organize major themes related to treatment and the law.

Additionally, I conducted 70 hours of participant observation over 24 months at several locations to analyze how legal and medical aspects of SVP law intersected. First, I observed meetings of the California Coalition on Sexual Offending (CCOSO). CCOSO is a sex offender management organization founded in 1986. Its members consist of law enforcement, criminal justice, mental health, probation, parole, and other community service experts working in the field of sexual abuse and assault. There are 12 CCOSO regional chapters throughout the state, most of which hold monthly meetings open to anyone working or interested in sex offender management. Meetings provide trainings on new and relevant research, usually by bringing in guest speakers. CCOSO also publishes resources related to sex offender management, such as guidelines for treatment provision and information on new and relevant sex offender legislation. The majority of CCOSO meetings I attended were with the Los Angeles South Chapter, housed at the Chicago School of Professional Psychiatry in downtown Los Angeles. Topics for meetings included stalking, polygraph examinations, multicultural sex offender treatment, and changing categories of offending as defined by the *Diagnostic and Statistical Manual of Mental Disorders* (DSM), which contains descriptions, symptoms, and other criteria for diagnosing mental disorders. Psychiatrists use these categories when diagnosing Sexually Violent Predators.

I also observed meetings of the Alliance for Constitutional Sex Offender Laws (ACSOL), a nonprofit, sex offender advocacy organization founded in 2011 that provides legal guidance and emotional support for "registered citizens" (the organization's term for individuals on the sex offender registry) and their families. The Executive Director of the organization is Janice

Bellucci, a civil rights lawyer who both litigates sex offender cases and lobbies for or against legislation related to sex offending in the state. ACSOL holds monthly meetings around the state, some of which take place in Los Angeles at an office space rented from the American Civil Liberties Union of Southern California (ACLU SoCal). I attended LA meetings in person. In addition, I listened to conference call access and recordings of meetings held in San Diego, Berkeley, and Sacramento, which are available for all meetings. Topics for ACSOL meetings address mainly legal and practical issues that registrants face—in particular, how to effectively comply with parole and travel restrictions and information on new legislation or aspects of legislation that may impact the lives of registrants. Meetings also provide a space for convicted sex offenders to speak about their experiences and the difficulties they face. This includes how their convictions have impacted their lives, the lives of their families, and the lives of their victims.

Neither CCOSO nor ACSOL focuses exclusively on SVPs, SVP treatment, or SVP legislation—there are no groups in the state that do. However, each group's work overlaps with legal and medical issues impacting SVPs—sometimes directly (such as CCOSO's published informational guide on SVP legislation and treatment practices), and sometimes more peripherally (a board member of ACSOL is a former SVP). More broadly, these groups address the intersection of treatment and law, and are thus valuable sources of information about the categorization processes surrounding sexually deviant behavior. I became an active and transparent member of both groups, joining their e-mail list serves, introducing myself to the individuals running meetings, and eventually presenting my own work (related to media coverage of sex offenders). While at meetings, I took extensive field notes for all observations, and conducted informal interviews, for which I obtained oral consent. These interviews

functioned more like informal conversations, which I would either take notes on while they occurred, or no more than ten minutes after the conversation finished. I also conducted content analysis of CCOSO and ACSOL resources, publications, and additional documents that were handed out during meetings and posted on their websites.

Finally, in order to examine the institutional contexts surrounding treatment, I analyzed primary documents relating to the California Department of Mental Health and Coalinga State Hospital, including a 2015 state audit of California's Sex Offender Commitment Program and a 2019 State Hospital Budget Report. These documents provided firsthand information on the staffing, treatment, finances, and general institutional structure of Coalinga State Hospital.

FINDINGS

My results demonstrate that three interconnected factors transform treatment into punishment. First, *institutional inefficiencies*, such as staffing shortages and treatment inconsistencies, make accessing and successfully completing treatment at Coalinga almost impossible. The *low status and stigma* invoked by the sexual predator label exacerbates these institutional issues, leading to emotional barriers, such as fear and disgust, that undermine the usefulness or need for treatment. Finally, 3) medical and clinical priorities become *subordinated to legal and punitive priorities* in the SVP framework: as medical actors respond to legal mandates, the meaning and experience of treatment is increasingly defined and shaped by punitive changes in law and policy. I discuss each of these findings in more detail below.

Institutional inefficiencies: staffing, unclear standards, and poor treatment

My data demonstrate several institutional factors that act as barriers to treatment. First, severe staff shortages contribute to shortages in availability and consistency of treatment offered. Leesl Herman, who runs several sex offender treatment clinics states, "Coalinga has been an interesting thing to watch. I mean they built this multimillion dollar facility…and it just didn't occur to them that maybe building it in this horrible God-forsaken part of California was going to make it challenging for people to staff..." Various clinicians and lawyers interviewed mentioned that the institution struggles with treatment class availability, widely varying quality of treatment, and high staff turnover, which can force patients to have to restart treatment modules (the sequential levels of therapy through which they must progress to complete treatment).

Turnover, amongst other issues, can create mistrust between patients and treatment providers. Christina Behle, a Los Angeles County Public Defender who represents patients at Coalinga, discusses how treatment is crowded, and her clients often sit on waitlists for years before they are able to access modules. Once they enter into a module, lack of uniform treatment standards means that the quality of classes is uneven: She states, "They repeat the same stuff over and over again. I review their records to prepare for trial, and a lot of it is the same, just cut and paste. Their annual goals are the same. Their quarterlies are the same. I just think they could do a lot better."

The 2015 California State audit of California's Sex Offender Commitment Program supports these sentiments, stating that, between 2012 and 2014, Coalinga offered no training at all for SVP evaluators. The institution also reduced professional qualifications necessary for certain evaluators in order to address "recruitment challenges" resulting from Coalinga's secluded location. The report indicates that Coalinga is approximately five staff members short

to fill the desired number of forensic evaluator, case management, and data tracking positions (in each category). The acting chief of forensic services at Coalinga confirmed understaffing, as well as a backlog of patient evaluations (261 as of December 2014). The report also found that the institution lacked clear and comprehensive treatment protocol and guidelines.

Experts also point out problems with the risk-assessment instruments used to assess patients. They point out that the Static-99, for example, does not take into account behavioral changes in offenders based on how or whether they comply with treatment. Subsequently, patients' responses to treatment (however successful) do not change their Static-99 scores. Dr. Adam Yerke, a licensed psychologist who works with High Risk Sex Offenders (HRSO's) and as an SVP evaluation contractor, states: "[The Static-99] is helpful for understanding who's high versus low [risk], but it doesn't really tell us who's getting better or worse…we can do treatment for 10 years, [but if you've still got five victims]…you can't change [the Static-99 test score]." Dr. Malinek adds, "[The Static-99] overlooks individual characteristics, it does not assess change, it does not include all relevant risk factors, it does not address dynamic risk factors, it does not address treatment…It's not the end of risk assessment, it's the beginning." Each doctor points out that sole reliance on this test to evaluate patients is thus incomplete.

Yet, while dynamic risk assessment models exist that would allow evaluators to take into account changes and response to treatment over time, the 2015 Sex Offender Commitment Program audit indicates that Coalinga and other state hospitals only began to offer training on such assessments instruments in 2015. In prior trainings, they provided a brief overview of such risk instruments without instructions on how to use them. This type of institutional inertia may explain in part why most evaluators continue to almost exclusively use the Static-99 when writing up evaluations and testifying in SVP trials. In Ronald Rogers' SVP trial, which took

place in 2017, both testifying psychiatrists used the Static-99 to evaluate and demonstrate evidence of Rogers' sexual psychopathy. Each argued that Rogers was a high-risk of reoffending based on his Static-99 score, and did not discuss any other sorts of indicators with which they evaluated Rogers.

Dr. Malinek justifies the continued use of these diagnostic measures by asserting that legal experts should have the capacity to understand their limitations. He states, "The law must be aware of the limitations of psychiatry. There are tools that the law has to assess science...The law or the legal decision should know that the Static-99 has only moderate predictive accuracy…the legal system should know that." He shifts responsibility onto legal actors who "should know" how to interpret clinical evaluations and results. At the same time, Malinek expresses concern and acknowledgement that jurors do not understand actuarial measures: "I see jurors falling asleep when I talk about statistical prediction…Is it fair to expect a juror with a high-school education and a lot of good intentions to really understand positive predictive power? Risk-factor analysis? Correlation?" Regardless, experts continue to use these tools.

In addition to barriers created through the use of the Static-99, the confessional nature of treatment modules also creates barriers to treatment. Patients must admit past crimes as part of programs and group therapy, but can be charged with new crimes if such admissions indicate that they have offended against victims or committed incidents yet unknown—this is called the "paradox of disclosure." As one clinician points out, "[Disclosure] opens you up to legal [vulnerability], but you only progress in treatment if you disclose." Many lawyers defending SVPs thus advise them not to participate in treatment, as a means of protecting them from additional charges.

Unsurprisingly, treatment providers disagree with this strategy and support engaging in treatment. They also argue that abstaining from treatment programming does not always work in the legal favor of Coalinga patients. Dr. Mann states, "[When SVPs don't engage] in treatment, they are viewed as more of a high risk to the courts, to the judges, to the lawyer…a jury is not going to decide to let [an SVP] out if they see they are not participating in treatment." Los Angeles Superior Court Judge James Dabney further adds that not participating in treatment reduces the number of protective factors (conditions considered to mitigate the risk of reoffending) available to SVPs on trial. This puts SVPs in a type of double bind, wherein either abstaining from treatment or participating in it can have negative repercussions.

Supporting this viewpoint, the prosecutor in Ronald Rogers' SVP trial used Rogers' refusal to participate in treatment as evidence of why he should remain at Coalinga, saying to the jury, "[Rogers] went to the hospital in 1996. Since that point he has done nothing to work on his diagnoses. He has had access to the best treatments, and he has no interest." Dr. Bruce Yanovsky, one of the court-appointed experts who evaluated Ronald Rogers at Coalinga and testified for the prosecution in the trial, added: "These [pathological sexual] behaviors are chronic, and there is no reason to believe they've gone away. I believe in treatment. In the absence of treatment, there is no reason to believe anything can change." Christina Behle, who often advises her clients at Coalinga not to participate in treatment, said that juries often disregard or brush aside treatment objections, telling her, "if he's refusing to treat, we don't trust him."

Emotional barriers: stigma, mistrust, and fear of responsibility

The low status of and stigma associated with SVPs exacerbate these bureaucratic and institutional issues. Cecelia Groman, a California CONREP employee (the organization responsible for supervising high-risk sex offenders after release) highlights how negative feelings about violent sex offenders can contribute to staffing issues: "Well trained individuals often don't want to deal with [SVPs]…How do you treat rapists and their fantasies about previous victims when you've had victims in your office crying and screaming about the horrible torture and abuse that they [have faced]?"

Many people often simply do not believe that treatment can be effective or useful. Dr. Yerke points out, "People don't understand that there are treatment procedures that actually work." Janice Bellucci, a civil rights lawyer, adds, "I had a judge one time (this was in Long Beach superior court), who told me, 'once a sex offender, always a sex offender. They always do it again. There is no cure.'" The prosecutor in Ronald Rogers' SVP trial said SVP diagnoses are, "Lifelong and chronic, part of your personality, they define *who you are*," and described Rogers' as having an "entrenched nature" as a predator. This type of statement directly undermines treatment, and demonstrates the stigma associated with the SVP label as well as the sex offender label more broadly.

Narratives questioning the efficacy of treatment and reinforcing the incurability of SVPs arise often in discussions of civil commitment. Chance Oberstein, a lawyer who helps sex offenders remove their names from the California registry, points out that SVPs are "different" than other offenders: "They're not susceptible to treatment, and the only way to deter them from doing what they've set out to do in their lives is to confine them to the warehouse." Leesl Herman states similarly:

> Civil commitment seems to fly in the face of what we believe as a nation, [but] there are definitely human beings who are too dangerous to be in our communities. We don't want to kill them, so we need to put them someplace…they can't walk among us. We won't be safe from them.

Interestingly, Herman relates this need for civil commitment to the *lack* of treatment that SVPs receive in prison:

> Some guys…spend 19 years in prison and they're ready to be released back into the community on parole. But their behavior is so dangerous and they have received no treatment inside. They've probably even developed criminal behaviors that are just going to make them more dangerous out on the streets.

In these contexts, SVPs constitute a unique type of stigmatized sex offender, one that is beyond treatment and beyond reintegration into society. This is the case for several reasons: because of the entrenched, violent "nature" of SVPs, the antisocial behaviors SVPs acquire while in prison, and even because they received no treatment while in prison.

When SVPs do participate actively in treatment at Coalinga, treatment providers can doubt the veracity of their statements and dismiss their participation. Dr. Christopher Mann, a clinical SVP evaluator who has worked at Coalinga State hospital, states about his patients:

> SVPs are masters of psychological warfare…they try to manipulate treatment providers or very skilled psychologists or interns to look good. If you're doing an assessment on them you have to constantly be on your guard, because they're definitely trying to show to you that they don't belong there…they're going to want to 'fake good' that they no longer have those inclinations and they no longer have those urges.

Dr. Malinek expresses similar sentiments about SVP evaluation interviews, adding, "We give very circumscribed weight for interviews in a forensic setting. Any SVP, including one who has agreed to see you, has an understandable investment in presenting themselves positively. They may simply lie throughout the interview." These statements suggest that if patients at Coalinga cooperate with treatment and evaluation, it may not necessarily matter for their forward progress, contributing to notions of "incurability" and treatment futility from both a doctor and a patient perspective.

Another barrier to participating in treatment is fear of discrimination. This applies primarily to patients at Coalinga who have committed crimes against children. As one ACSOL meeting participant stated, "Everyone hates a child molester." According to several interview respondents, although patients at Coalinga have committed a broad range of sexual offenses, pedophiles occupy the lowest social status there, mimicking "prison-like" hierarchies wherein they may face physical and sexual violence from other patients. For example, Dr. Mann states of his Coalinga patients:

> [They] don't want other [patients] to know they're child molesters, and are oftentimes are segregated [because] rapists will harm [patients] who have a history of child molestation offenses…Of all the offenders I've worked with, the ones that are the most stigmatized are the ones that are genuine pedophiles.

Thus, even within an environment consisting entirely of people categorized as high-risk sexual predators, patients distinguish between themselves according to crime—with crimes against children occupying the lowest rung of the ladder. Christina Behle, a Los Angeles County Public Defender who represents various patients at Coalinga, points out that this hierarchy acts as a barrier to treatment. Because treatment requires the discussion of past crimes in front of a mixed

group of patients (i.e., not all pedophiles), pedophiles may decline to participate in order to minimize stigma and discrimination from other patients at the hospital.

Finally, fear of responsibility acts a treatment barrier. Treatment providers and lawyers are afraid of signing someone off as "rehabilitated" and then having that person commit another crime, lest they bear the resultant responsibility. Dr. Yerke states: "…nobody is ever going to say, 'okay. I think they're cured.' Nobody wants to sign off on that, right? You'd [say they were done with treatment] and then they go reoffend or something." He goes on to further explain that:

> Even when you use all your risk instruments, you can't fully predict the future. So somebody could look like a really good candidate [for release], and I can't say 'no' just out of my fear…But that's not to say that they're not going to go out and offend again, [and] I don't want to have my name on the news as the one who signed off on the report to release them.

Thus, fear plays a role throughout evaluative processes.

Cecelia Groman also mentions that fear often influences the decisions of legal and political actors involved in SVP proceedings:

> …Politicians [and judges] worry about losing their jobs if they're not tough on crime and tough on sex offenses…it doesn't really matter what the treatment people say…[But, often] these laws make it harder on the offenders. You can't find a place to live. Nobody will hire you. How does that make you less risky?"

Legal and political actors' perceived obligations to the public, and perceptions of how the public may view "sympathy" towards sex offenders, can thus influence decision-making in this area.

Such concerns extend to juries, as well, who can feel a responsibility to err on the side of

caution even if offenders complete treatment. Essentially, in order to release an SVP, jurors have to unanimously agree that the offender has changed or no longer possesses the mental health diagnosis under which they were originally designated an SVP. Dr. Mann points out that this is difficult for jurors to do. Dr. Malinek adds: "it is a challenge for jurors to be intellectually honest [in SVP cases], and I think in sex cases particularly, the emotionally evocative element is a problem." Similarly, when talking with jurors after the verdict in the SVP trial I observed, they made several comments that alluded to the responsibility they bore to "protect" future victims, to make sure that the defendant did not go out into the world and offend again. Dr. Malinek adds that, amongst jurors, "there's often an assumption that [if] you were an SVP, you're forever an SVP…but a lot of people I see were SVPs and no longer are. They may have changed, they may have aged, they may have been treated…and I think that jurors often don't understand..."

The subordination of medical and clinical priorities to legal and punitive priorities

In addition to institutional and emotional barriers, medical and clinical priorities become subordinated to legal and punitive priorities in the SVP framework in ways that shift the meaning and experience of treatment towards punishment. The law maintains a hierarchical position over medicine in sex offender civil commitment, defining the sexually predatory and expecting that medicine respond to those legal definitions and parameters. Yet medicine and law have different concerns. While medicine is oriented towards diagnosis and treatment, the law asks medical evaluators to predict future dangerousness. According to Dr. Mann, "…dangerousness at present is diagnostic and we're called upon by the courts to be prognostic. [But] we can't predict the future. We can only do our best…the legal system is requiring us to do more than our job." He adds that, "my report has to answer a legal question and I don't get to determine what the legal

question is." Ultimately, courts, and not clinicians, make decisions about SVP treatment—clinicians only make recommendations to the courts.

The law in this case can also dictate medical diagnoses and practices. First, the law may force certain diagnostic categories on offenders. For example, California law defines a child as anyone under the age of 14. According to Dr. Malinek, this means that a 17-year old who has consensual sex with a girlfriend who is 13 years and 11 months old could be legally prosecuted as a pedophile, without meeting the diagnostic criteria for that category. From this perspective, "anyone who had sex with a minor could be prosecuted. We could put the entire legal community in prison for having had sex before the age of 18, which they usually do."

Additionally, the law shifts traditional medical obligations. While doctors usually consider themselves obligated to their patients, Dr. Mann points out that, in the case of SVP evaluations, "[Doctors] have two clients—obviously the patient, but, when we're doing sex offender treatment, also the courts." This creates competing obligations for medical professionals, who must perform both an ethical duty to protect and treat their patients and to protect the public—obligations that often directly conflict.

Because of these competing obligations, evaluators wind up serving in a "quasi-judicial" role, rather than providing objective medical information. SVP evaluations utilize legal terminology, and the law impacts both sex offender actuarial risk measures and treatment procedures. During Ronald Rogers' SVP trial, the defense attorney questioned medical expert Dr. Robert Owen about his report language, "[In your report], are you giving us legislative terms, or medical terms? Are you using medical terms, or terms you've gotten from the statute?" Owens responded, "I use both." Owens did go on to use both, at one point quoting the legal statute verbatim by explaining to the prosecutor that Rogers "posed a substantial risk" to society,

according to his evaluation. Christina Behle also points out how the law impacts actuarial tools used by medical providers. The Static-99 test takes into account number of prior offenses, meaning that if offenders are charged with multiple crimes, which they frequently are, those charges factor into and raise their overall score or degree of dangerousness. In both of these ways, legal factors dictate medical diagnoses.

Further demonstrating this dynamic, CCOSO meetings focus almost exclusively on introducing and managing current diagnostic procedures and categories, most of which are introduced via new laws and regulations, but rarely question the introduction of these procedures. For example, one meeting brought in a polygraph expert to discuss how to integrate polygraphy into treatment, as the law now mandates polygraph testing for various sex offenses. The resultant discussion touched upon the legal ramifications of polygraphs, how they impact disclosure to parole officers, and how clinicians should respond legally if patients fail the test (CCOSO Riverside, January 12, 2016). Individual clinicians may have more nuanced views of the treatment tools required by law (for example, Dr. Yerke spoke at length about the way he uses polygraphs in treatment to hold patients accountable for their actions), yet such tools remain mandated by contact or law, leaving clinicians with little choice but to integrate them.

DISCUSSION

Legal and medical literature opposed to SVP laws argues that they are punishment disguised as treatment, yet does not demonstrate how treatment processes in this domain come to constitute punishment. I find that a number of institutional and social processes contribute to this transformation, including institutional disfunction, stigma and labeling, and unequal authority

between medicine and law. In tandem, these factors ensure that treatment functions punitively and cannot be "successful."

Treatment Paradoxes and Institutional Disfunction

My results demonstrate how different institutional inefficiencies act as barriers to treatment. As legal and medical actors navigate the paradox of disclosure (Miller 2010) they have conflicting perspectives about treatment participation. Clinicians I interviewed recognize this paradox, but expect patients to participate in treatment, anyway. Furthermore, clinician statements, trial testimony, and comments from Judge James Dabney show how treatment non-participation can be used as evidence of continued pathology. This suggests that patients may face an additional paradox—both disclosure *and* nondisclosure can jeopardize their chances for release, creating a double-bind wherein any treatment response negatively impacts offenders. When representing SVP clients, Christina Behle often advises her clients to decline treatment, despite recognizing that juries often hold this against them, indicating that some legal actors still find the potential costs of disclosure to be greater than treatment non-participation.

Experts in the study also critique the Static-99 actuarial test as a measure for treatment progress, pointing out that patients can go through years of treatment that do not change their Static-99 score. But they nonetheless continue to use this test, despite the existence of more dynamic risk assessment models, and while acknowledging that jurors likely understand neither the test nor its limitations. Continued use of the Static-99 may partially stem from institutional factors, such as lack of training on other risk assessment tools.

Other her institutional limitations delay and prevent access to treatment, as well. These include understaffing, general reluctance to work in a setting with high risk sex offenders, lack of

training, and lack of clear treatment guidelines. My interviews with clinicians and lawyers illustrate the ways that these institutional issues delay or block treatment, acting not only as treatment disincentives, but in some cases actually making treatment unavailable to patients for long periods of time. If treatment is actually unavailable to patients, civil commitment becomes indefinite confinement alone, demonstrating punitive impact, if not intent. Coalinga's institutional issues also suggest that state money allocated to its budget may be inefficiently allotted and spent (Janus 2000).

The Impact of SVP Labeling and Stigma on Diagnosis, Treatment, and Evaluation

Adding to existing work that explores how the medical diagnosis of sexual predator acts as a form of labeling that results in dehumanization and rights-deprivation (Douard 2008, Halperin and Hoppe 2017), labeling negatively impacts SVP treatment processes and evaluations. Assigning SVP diagnosis implies a type of pathological identity that makes treatment seem futile, regardless of its supposed or actual effectiveness. Belief that treatment is futile for some offenders both justifies their confinement and excuses treatment inadequacies. The lack of treatment that SVPs receive while serving criminal sentences further demonstrates and supports their entrenched pathological nature, indicating that they are "beyond" treatment before they even arrive at Coalinga.

In line with research that labeling may reduce the likelihood of helping behavior (Corrigan and Matthews 2003), this label creates stigma within treatment programs—personal feelings about SVPs impact staffing and treatment experiences at Coalinga. When SVPs actively comply with and participate in treatment, clinicians often dismiss their perspectives and participation, deeming them "untrustworthy" or "manipulative." While this may in fact be the

case, it further undermines treatment compliance and efficacy. My results also demonstrate that stigma may negatively impact the treatment experiences of SVPs by causing fear or hesitation to participate, particularly amongst patients who are pedophiles. These results add valuable information about SVPs to existing studies on stigma in sex offender treatment (Jahnke and Hoyer 2013). In particular, they demonstrate that, even within an already stigmatized category, hierarchies of offending persist that create additional barriers to treatment and negative treatment experiences for some offenders.

The labeling and stigma of SVPs also creates fear of responsibility amongst legal and medical actors that discourage them from accepting the validity of treatment completion. Competing obligations exist between evaluating treatment success and "protecting" the public that make it difficult for judges and jurors in particular to make unbiased judgements. This study adds observations from an actual SVP trial to existing work in this area using trial simulation (Lieberman and Krauss 2009, Scurich and Krauss 2014) and adds to existing findings that medically labeling sexual pathologies can impact trial outcomes as much or more than actual trial-related factors (Konecni, Mulcahy, and Ebbesen 1980).

Differences in Medical-Legal Priorities, Expectations, and Power

Finally, existing work suggests that, in SVP cases, scientific calculations become reworked into legal logics as courts use these logics to justify civil commitment (Vogler 2018), my results show several of the processes through which this occurs. First, to comply with civil commitment statutes, clinicians shift from diagnosis to prognosis, and, in so doing, broaden their ethical obligations to include public safety, as well as patients. These changes fundamentally alter the dynamics of treatment and evaluation, moving it in the direction of dangerousness

prevention. Clinicians must also respond to legal authority and changing laws by adjusting their treatment and evaluation models, as we see in the case of polygraphy and shifting age of consent, and by the way in which the law impacts actuarial tests such as the Static-99.

While clinicians express feeling pulled by competing obligations between medicine and law, they largely comply with legal expectations. They justify this compliance with their own expectations of the law's responsibility to understand the limitations of their expertise, and by emphasizing their role as recommenders and evaluators, rather than legal decision-makers. This could be a type of distancing—recognizing the problematic components of their role, they minimize its importance (Goffman 2009). They can also find ways to exert their authority or push back on legal guidelines, such as using mandated tools in ways more aligned with medical logics, as we see with Dr. Yerke in the case of polygraphy.

These results demonstrate the processes through which medical compliance with legal guidelines may shift medical treatment and evaluation in an overall punitive direction. While prevailing literature tends to discuss how medical discourse defines social problems (Orr 2006), the sociology of diagnosis in this instance demonstrates the ways that legal discourse and authority continuously shape how treatment operates across the bodies of SVP patients (Fischel 2016). Of course, clinicians do not have to conduct SVP evaluation and treatment—they choose to do so for significant financial compensation, often in addition to full time jobs seeing other patients (*see* Ewing 2011), indicating that they certainly bear some responsibility for perpetuating a system that they recognize is flawed.

CONCLUSION

I cannot generalize my findings beyond this study, as they represent only a small number of providers and legal actors within the state of California. However, they provide a starting point from which sociologists can begin to explore some the processes surrounding sex offender incapacitation and treatment, and why it is often ineffective. Future work should address how treatment processes vary by state law and amount of funding, which undoubtedly impact institutional functioning and interactions with medical professionals. In addition, despite several attempts, I was unable to obtain visitation access to Coalinga State Hospital. Doctor-patient confidentiality, combined with the security and regulations of a locked facility such as Coalinga, make observing SVP treatment sites and procedures extremely difficult, if not impossible. Yet such observation can add valuable information to understanding treatment barriers.

I did not discuss treatment with SVPs themselves, partially due to these access issues. Because so few SVPs have been released, and those that are remain under strict surveillance and security regulations, this is also extremely difficult. While potentially valuable, interviewing SVPs has mixed implications—as results of this study indicate, they likely have a vested interest in portraying themselves positively and in critiquing treatment—they are unlikely to express neutral opinions about the topics addressed here. Still, their experiences of treatment are certainly relevant to discussions such as these, and research should attempt to find ways to integrate their perspectives.

Despite these limitations, the results of this study show empirically what others often theorize, but do not demonstrate. Opponents of SVP laws argue that they constitute punishment under the guise of treatment based on broad legal, medical, and ethical explanations (Douard 2008, Janus 2006, Testa and West 2010), without showing the processes through which they

function as punishment. Demonstrating the myriad institutional and interpersonal interactions that create barriers to treatment verifies these theoretical objections and illustrates that, regardless of intention; legal, institutional, and social factors may make it impossible for SVP laws to function in any other way besides punishment.

This has important and new implications for understanding the integration of therapeutic discourses and logics into law. Like many other individuals within treatment programs, sexual predators are a "social problem" (Sweet 2018). Yet, unlike other social problems (for example domestic violence victims, welfare recipients, drug addicts, etc.), sexual predators are perceived as beyond rehabilitation before they enter treatment—this identity is overarching and all-encompassing. Treatment processes simply solidify this identity (Haney 2010)—sexual predators are a social problem that society does not want to solve.

This is of particular concern as the SVP template of preventative detention (Prentky et al. 2006) begins to be applied to other "undesirable" groups. In June of 2019, Los Angeles County and city officials called for a reconsideration of the Lanterman-Petris-Short Act (which, in 1972, ended the involuntary lifetime commitment of most individuals with mental illness in the state) suggesting that the city alter the Act to allow for the involuntarily commitment of "chronically homeless" individuals with mental illness (Contributing Editor 2019). Similarly, a proposed 2020 ballot measure aimed at the homeless population of California suggests assigning special courts to determine whether economic need, drug use or addiction, or mental health issues caused individuals to commit crimes (Ballotpedia 2019). With the assistance of two experts, these courts will determine whether individuals are potential harms to themselves because of mental health issues, and mandatorily commit them to mental health facilities if so. These cases demonstrate how the SVP template is already being used to regulate other "social problems."

While treatment will undoubtedly vary in new contexts, my results indicate several of the ways that it will likely punish and marginalize, regardless.

Overall, this study demonstrates how medical-legal interactions, both institutional and interpersonal, can shape treatment environments in punitive ways. As the therapeutic discourse of SVP laws expands to other populations, we must continue to examine how treatment serves as both a mechanism and a justification for the exclusion of "unsolvable" social problems.

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